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ARKANSAS CODE OF 1987 ANNOTATED



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TITLE 4: BUSINESS AND COMMERCIAL LAW (CHAPTERS 25-40)

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Under the Direction and Supervision of the
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Sources

This volume contains legislation enacted by the Arkansas General Assembly through the 2001 Regular Session. Annotations are to the following sources:

Arkansas Supreme Court and Arkansas Court of Appeals Opinions through 2001 Ark. Lexis 284 (May 3, 2001).

Federal Supplement through May 8, 2001.

Federal Reporter 3d Series through May 8, 2001.

United States Supreme Court Reports, through May 8, 2001.

Bankruptcy Reporter through May 8, 2001.

Arkansas Law Notes through the 1999 Edition.

Arkansas Law Review through Volume 53, No. 3, p. 749.

University of Arkansas at Little Rock Law Journal through Volume 23, No. 2, p.540.

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| 2. Agriculture | 17. Professions, Occupations, and Businesses |
| 3. Alcoholic Beverages | 18. Property |
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User's Guide

Many of the Arkansas Code's research aids, as well as its organization and other features, are described in the User's Guide, which appears near the beginning of Volume 1 of the Code.

TITLE 4

BUSINESS AND COMMERCIAL LAW

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SUBTITLE 3. CORPORATIONS AND ASSOCIATIONS

RESEARCH REFERENCES

Am. Jur. 18 Am. Jur. 2d, Corp., § 1 et seq. C.J.S. 18 C.J.S., Corp., § 1 et seq.

CHAPTER 25
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4-25-101. Resignation of agent.

(a)(1) Any person who has been designated by any corporation, either foreign or domestic, as its authorized agent for service of process, may file with the Secretary of State a signed statement that he or she is unwilling to continue to act as the agent of the corporation.

(2) Upon the expiration of sixty (60) days after the filing of the statement with the Secretary of State, the capacity of the person as agent shall terminate.

(b) Upon the filing of the statement, the Secretary of State forthwith shall give written notice, by mail, to the corporation of the filing of the statement and the effect thereof. The notice shall be addressed to the corporation at its principal office, as shown by the records of the Secretary of State's office, and the corporation shall immediately designate another agent for service of process.

History. Acts 1941, No. 54, § 1; A.S.A. 1947, § 64-1102. **Cross References.** Business corporation, resignation of agent, § 4-26-502.

4-25-102. Corporate security or surety bonds.

(a) Whenever the laws of this state provide for the furnishing of a corporate security or surety bond to assure financial responsibility, the person, firm, or corporation required to provide the bond may, in lieu thereof, provide the bond by furnishing certificates of deposit issued by Arkansas banks and savings and loan associations or direct general

obligation securities issued by the State of Arkansas or any agency or instrumentality thereof, by any political subdivision of this state, or by the United States or any of its agencies in the principal amount of not less than the amount of the bond to be provided.

(b) It is not the intention of this section to prohibit the furnishing of personal bond or the furnishing of a property or other bond in any other such manner as is now provided by law.

(c) This section shall not apply to banks, savings and loan associations, any case where federal law requires a corporate surety bond, or in any case where performance of contractual obligations is required on the part of the person required to provide bond.

(d) Every governmental agency affected by this section is authorized and directed to issue such rules and regulations as are necessary and appropriate for the carrying out of this section.

History. Acts 1979, No. 634, §§ 1, 2; A.S.A. 1947, §§ 66-4105, 66-4106.

4-25-103. Contributions authorized.

All business corporations, railroad corporations, banking corporations, insurance corporations, building and loan corporations, benevolent corporations, and cooperative associations shall have the power to make donations for the public welfare or for charitable, scientific, or educational purposes, subject to such limitations, if any, as may be contained in its articles of incorporation or any amendment thereto.

History. Acts 1951, No. 69, § 1; A.S.A. 1947, § 64-1101.

Publisher's Notes. This section may have been superseded as to business corporations by § 4-26-204, as to insurance corporations by § 23-69-111, and as to railroad corporations by § 23-11-209.

RESEARCH REFERENCES

Ark. L. Rev. Charitable Donations by Corporations, 5 Ark. L. Rev. 389.

4-25-104. [Repealed.]

Publisher's Notes. This section, concerning insolvent corporations, was repealed by Acts 1993, No. 444, § 1. The section was derived from Acts 1893, No. 189, §§ 1-4, p. 345; C. & M. Dig., §§ 1798-1801; Pope's Dig., §§ 2198-2201; A.S.A. 1947, §§ 64-1103 — 64-1106.

Acts 1993, No. 444, § 2, provided: "The

General Assembly determines that Arkansas Code § 4-25-104 is no longer necessary and should be repealed as the dissolution of insolvent corporations is now comprehensively covered by Arkansas Code §§ 4-26-1108, 4-27-1430, and 4-59-201 et seq."

4-25-105. Joint tenancy in stock certificate.

(a) In any instance in which any corporation or cooperative association organized under the laws of the State of Arkansas may issue any

stock certificate or other form of certificate of any character evidencing ownership or equity in the corporation or cooperative association in two (2) or more persons and shall use the word “or” between the names of the persons to whom it is issued so as to cause it to read in the alternative, the persons to whom the certificate is issued in this form shall hold and own the same as joint tenants and not as tenants in common, and full and complete ownership of the certificate so issued shall pass and belong to the last survivor of the persons so named.

(b) Any one (1) of the persons to whom any certificate may be issued in manner and form as provided in subsection (a) of this section may endorse, assign, or transfer the certificate as fully and as effectively as could all persons therein named joining together. The endorsement, assignment, or transfer so made shall be fully binding on all persons named therein.

History. Acts 1959, No. 161, §§ 1, 2; 161, §§ 1, 2, are also codified as § 18-27-A.S.A. 1947, §§ 50-110, 50-111. 101.

Publisher’s Notes. Acts 1959, No.

RESEARCH REFERENCES

ALR. Issuance of stock certificate to joint tenants as creating gift inter vivos. 5 ALR 4th 373.

Transfer on corporate books as sufficient for gift of stock. 6 ALR 4th 250.

Ark. L. Rev. Joint Tenancy — Right of Survivorship — “Four Unities”, 23 Ark. L. Rev. 136.

CASE NOTES

Cited: Smith v. Paul, 317 Ark. 182, 876 S.W.2d 266 (1994). *

4-25-106. Authorization for preexisting corporations to do business in state.

(a)(1) Any corporation organized in this state under the provisions of Acts 1931, No. 255, §§ 77-80 [repealed], for the purpose of transacting business outside this state is authorized to transact business within the state by filing an amendment to its articles of incorporation to that effect if, upon filing the amendment, it pays, in addition to the fees required for filing the amendment, the difference between the amount of fees paid on its original incorporation for the transaction of business outside the state and the fees it would have been required to pay for incorporation under Acts 1931, No. 255 [repealed], as a domestic corporation formed for the purpose of doing intrastate business.

(2) Upon filing the amendment, the corporation shall thereafter be incorporated for all purposes as if it was incorporated under the terms of Acts 1931, No. 255, §§ 1-7, 38, 39, 68, and 69 [repealed], and the corporations are entitled to all the rights and privileges of corporations formed under Acts 1931, No. 255, §§ 1-7, 38, 39, 68, and 69 [repealed].

(b) Articles of original incorporation and the amendment as prescribed in this section shall be filed with the county clerk of the county in which the principal office of the corporation is to be located.

History. Acts 1959, No. 274, § 1.

4-25-107. Effect of certain contract provision upon determination of agency.

A person who requires by contract that another person comply with any state or federal law, regulation, or rule, including but not limited to, one relating to wages, benefits, or safety conditions, shall not be deemed to subject that person to his or her control for purposes of determining agency.

History. Acts 1989, No. 946, § 1.

4-25-108. Eligibility to receive county grants.

Before an unincorporated association is eligible to receive a grant administered by the county, the association shall provide the county judge a list of six (6) names and addresses of officers and directors of the association, along with a letter signed by the president and the secretary of the association authorizing a specific officer of the association to receive funds on behalf of the association.

History. Acts 1997, No. 534, § 1.

4-25-109. Corporation permitted to change its state of incorporation.

(a)(1) Any business corporation may change its state of incorporation from this state to any other jurisdiction which authorizes this change.

(2) Any foreign corporation may change its jurisdiction of incorporation to this state from any other jurisdiction which authorizes this change.

(b)(1) This change may be made by a business corporation:

(A) Only pursuant to authorization by a majority of the voting power present, or by a larger vote as the articles may require;

(B) At an annual or special meeting of shareholders; and

(C) If the notice sets forth the consideration of this action as the purpose of the meeting.

(2)(A) There shall be filed with the Secretary of State a certificate as to the authorization by the shareholders, signed by the president or vice president and the secretary and acknowledged by the president or vice president.

(B) The certificate may be delivered to the Secretary of State for filing as of any specified date within thirty (30) days after the date of delivery.

(3) When all taxes, fees, and charges have been paid as required by law, the Secretary of State shall record the certificate in the office of the

Secretary of State and issue to the corporation a certificate reciting that it has taken all action required under the laws of this state to change its state of incorporation to the other jurisdiction.

(4) The corporation shall, upon complying with the laws of the new jurisdiction, no longer be under the laws of this state.

(5) Certified copies of the certificate of incorporation or other official certificate evidencing the corporation's incorporation under the laws of the other jurisdiction shall be filed with the Secretary of State within thirty (30) days of receipt by the business corporation.

(c)(1) The change may be made by a foreign corporation by filing with the Secretary of State:

(A) A certified copy of its original or restated articles and all amendments subsequent to the latest restatement, which were filed in the other jurisdiction;

(B) The original of a certificate of good standing from the state of original jurisdiction, dated not more than thirty (30) days earlier than the date of filing in this state;

(C) An application for incorporation pursuant to this section, signed for the corporation by its president or vice president and its secretary or assistant secretary, and acknowledged by one (1) of the signing officers, setting forth the requirements of § 4-27-202;

(D) A franchise tax contact sheet provided by the Secretary of State; and

(E) A certificate by the Secretary of State or other proper officer of the jurisdiction in which the corporation is incorporated, reciting that the corporation has taken all action required under the laws of the jurisdiction to become a corporation incorporated under the laws of this state.

(2)(A) These documents may be delivered to the Secretary of State for filing as of any specified date within thirty (30) days after the date of delivery.

(B) When all fees and charges have been paid as required by law, the Secretary of State shall record the documents in the office of the Secretary of State and issue a certificate of incorporation of the corporation under the laws of this state.

(3) The certificate of incorporation shall be conclusive evidence of the fact that the corporation has been duly incorporated under the laws of this state.

(4) Effective as of the time of filing the documents with the Secretary of State, the corporation shall be incorporated solely under the laws of this state and no longer under the laws of the other jurisdiction.

History. Acts 2001, No. 454, § 1.

CHAPTER 26

BUSINESS CORPORATIONS GENERALLY

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. FORMATION AND POWERS OF CORPORATIONS.
3. AMENDMENT OF ARTICLES OF INCORPORATION.
4. CORPORATE NAME.
5. REGISTERED OFFICES AND AGENTS.
6. CORPORATE FINANCE.
7. SHAREHOLDERS.
8. DIRECTORS AND OFFICERS.
9. MORTGAGE, SALE, ETC., OF ASSETS.
10. MERGER AND CONSOLIDATION.
11. DISSOLUTION AND LIQUIDATION.
12. FILING AND FEES.

Publisher's Notes. This chapter applies to business corporations existing prior to midnight, December 31, 1987, which do not elect to be covered by Chapter 27 of this title. See § 4-27-1701.

Cross References. Arkansas Business Corporation Act of 1987, § 4-27-101 et seq.

Change of state of incorporation, § 4-25-109.

RESEARCH REFERENCES

Ark. L. Notes. Matthews, A Statutory Primer: The Arkansas Business Corporation Act of 1987, 1987 Ark. L. Notes 81.

Ark. L. Rev. Organizing an Arkansas Business Corporation — A Primer, 21 Ark. L. Rev. 455.

Corporations — “Piercing the Corporate Veil” in Tort, 22 Ark. L. Rev. 531.

Professional Corporations — A Current Appraisal, 23 Ark. L. Rev. 215.

Some Legal and Other Problems of Pro-

fessional Corporations in Arkansas, 24 Ark. L. Rev. 292.

Rosenzweig, Protecting the Rights of Minority Shareholders in Close Corporations Under the New Arkansas Business Corporation Act, 44 Ark. L. Rev. 1.

UALR L.J. Brewer, An Overview of the 1987 Arkansas Business Corporation Act, 10 UALR L.J. 431.

Survey—Corporations, 10 UALR L.J. 549.

CASE NOTES

Foreign Corporations.

No provision in this chapter requires that a foreign corporation file amended articles of incorporation with the Secretary of State of Arkansas for tax computation purposes. *Franklin Elec. Co. v. Heath*, 261 Ark. 269, 547 S.W.2d 755 (1977).

Cited: *Missouri P.R.R. v. W.S. Fox & Sons*, 251 Ark. 247, 472 S.W.2d 726 (1971); *Barnett v. Borg-Warner Acceptance Corp.*, 488 F. Supp. 786 (E.D. Ark. 1980).

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 4-26-101. Title.
- 4-26-102. Definitions.
- 4-26-103. Applicability of chapter.
- 4-26-104. Administration by Secretary of State.
- 4-26-105. Waiver of notice.

SECTION.

- 4-26-106. Certificates of Secretary of State to be received in evidence.
- 4-26-107. Disapproval of articles and other documents by Secretary of State — Appeals.

Cross References. Applicability to stock savings and loan associations, § 23-37-105.

General incorporation laws, Ark. Const., Art. 12, § 6.

Professional Corporation Act, § 4-29-201 et seq.

Effective Dates. Acts 1965, No. 576, § 98: effective at midnight on Dec. 31, 1965.

4-26-101. Title.

This chapter shall be known and may be cited as the “Arkansas Business Corporation Act”.

History. Acts 1965, No. 576, § 1; A.S.A. 1947, § 64-101.

RESEARCH REFERENCES

UALR L.J. Mathews, Corporate Statutes—Which One Applies?, 13 UALR L.J. 69.

4-26-102. Definitions.

As used in this chapter, unless the context otherwise requires:

- (1) “Corporation” or “domestic corporation” means a corporation for profit subject to the provisions of this chapter, except a foreign corporation;
- (2) “Foreign corporation” means a corporation for profit organized under laws other than the laws of this state for a purpose or purposes for which a corporation may be organized under this chapter;
- (3) “Articles of incorporation” means the original or restated articles of incorporation and all amendments thereto;
- (4) “Shares” means the units into which the proprietary interests in a corporation are divided;
- (5) “Subscriber” means one who subscribes for shares in a corporation, whether before or after incorporation;
- (6) “Shareholder” means one who is a holder of record of shares in a corporation;
- (7) “Authorized shares” means the shares of all classes which the corporation is authorized to issue;

(8) "Treasury shares" means shares of a corporation which have been issued, have been subsequently acquired by and belong to the corporation, and have not been cancelled or restored to the status of authorized but unissued shares. Treasury shares shall be deemed to be "issued" shares, but shall not be considered as an asset of the corporation or as outstanding for dividend, quorum, voting, or other purposes;

(9) "Net assets" means the amount by which the total assets of a corporation, excluding treasury shares, exceed the total debts of the corporation;

(10) "Stated capital" means, at any particular time, the sum of:

(A) The par value of all shares, including treasury shares, of the corporation having a par value that have been issued and have not been cancelled or redeemed;

(B) The consideration fixed by the corporation in the manner provided by law for all shares, including treasury shares, of the corporation without par value that have been issued and have not been cancelled or redeemed, except that part of the consideration actually received therefor as may have been allocated to capital surplus in a manner permitted by law; and

(C) Such amounts not included in subdivisions (10)(A) and (B) of this section as have been transferred to stated capital of the corporation, whether upon the issue of shares as a share dividend or otherwise, minus all reductions from such sum as have been effected in a manner permitted by law;

(11) "Surplus" means the excess of the net assets of a corporation over its stated capital. "Surplus" shall be classified into "earned surplus" or "retained earnings" and "capital surplus"; and these classifications shall be shown separately on the books, balance sheets, and statements of the corporation;

(12) "Insolvent" means inability of a corporation to pay its debts as they become due in the usual course of its business;

(13) "Accrued preferential dividends" means the aggregate amount which, at any time, would be payable as dividends on shares having preference in respect to dividends before dividends can be paid to the holders of shares whose rights as to dividends are subordinate to this preference. For the purpose of this definition, a dividend is deemed paid if it has been declared, and funds for its payment have been set aside;

(14) "Principal place of business", as used in this chapter, refers to the place in this state where the corporation maintains its principal business office; and the principal place of business may be different from the corporation's "registered office".

History. Acts 1965, No. 576, § 2;
A.S.A. 1947, § 64-102.

CASE NOTES

Cited: Franklin Elec. Co. v. Heath, 261 Ark. 269, 547 S.W.2d 755 (1977).

4-26-103. Applicability of chapter.

(a) Corporations may be organized under this chapter for any lawful purposes except that where another statute of this state, other than Acts 1931, No. 255, which is repealed by this chapter, requires that corporations of any designated class be organized thereunder, corporations of that designated class shall be organized under the other statute and shall be subject to the provisions thereof.

(b) In respect to all corporations of any designated class that could be organized under this chapter but which are subject to the provisions of any other statute or statutes placing restrictions or conditions on the organization of these corporations, or providing for the regulation of corporations after organization, the provisions of this chapter shall apply to corporations only to the extent that this chapter is not inconsistent with the provisions of the other statute or statutes. This chapter is not intended to repeal, amend, or qualify any statutes of such character.

(c) From and after midnight December 31, 1965, all corporations now existing and chartered under Acts 1931, No. 255 [repealed], or under Acts 1927, No. 250, or under Act April 12, 1869, shall be subject to the provisions of this chapter, subject, however, to the following:

(1) A corporation originally incorporated under a general business corporation statute of this state, but belonging to a class whereunder the organizational filing procedures have been transferred to some state office or agency other than the Secretary of State, will not be subjected to the provisions of this chapter;

(2) Previously chartered corporations brought under the provisions of this chapter will not be required to substitute new filings under this chapter for filings heretofore made with the Secretary of State and the county clerk in accordance with the requirements of the applicable antecedent statutes; and each designation of a resident agent and resident office made in accordance with the then applicable law by a previously chartered corporation brought under this chapter is declared a valid designation for the purposes of this chapter;

(3) Previously chartered corporations that are subject to regulation under other statutes shall remain subject to such regulation.

(d) To the extent that they were subject to the provisions of Acts 1931, No. 255, corporations created under the Dental Corporation Act, § 4-29-401 et seq., or under the Medical Corporation Act, § 4-29-301 et seq., shall be subject to the provisions of this chapter. However, corporations created under the Dental Corporation Act or the Medical Corporation Act prior to midnight December 31, 1965, will not be required to make new filings in lieu of lawful filings made by those corporations prior to midnight, December 31, 1965, and each lawful

designation of resident agent or resident office made prior to midnight December 31, 1965, by the corporations shall be continued in effect as a valid designation under this chapter.

History. Acts 1965, No. 576, § 3; 250, and Act April 12, 1869, referred to in A.S.A. 1947, § 64-103. this section, are deemed superseded by

Publisher's Notes. Acts 1927, No. this chapter.

RESEARCH REFERENCES

UALR L.J. Mathews, Corporate Statutes—Which One Applies?, 13 UALR L.J. 69.

CASE NOTES

Cited: White County Guar. Sav. & Loan Ass'n v. Searcy Fed. Sav. & Loan Ass'n, 241 Ark. 878, 410 S.W.2d 760 (1967).

4-26-104. Administration by Secretary of State.

The Secretary of State shall have the power and authority reasonably necessary to enable him to administer this chapter efficiently and to perform the duties therein imposed upon him.

History. Acts 1965, No. 576, § 92; A.S.A. 1947, § 64-119.

4-26-105. Waiver of notice.

(a) Whenever any notice is required to be given to any shareholder or director of a corporation under the provisions of this chapter or under the provisions of the articles of incorporation or bylaws of the corporation, a waiver in writing signed by the person or persons entitled to the notice, whether before or after the time stated therein shall be equivalent to the giving of the notice.

(b) The attendance of any shareholder or director at a meeting without protesting, prior to or at the commencement of the meeting, the lack of proper notice shall be deemed to be a waiver by him of notice of the meeting.

History. Acts 1965, No. 576, § 43; A.S.A. 1947, § 64-116.

4-26-106. Certificates of Secretary of State to be received in evidence.

A certificate of the Secretary of State under the Great Seal of Arkansas, as to the existence or nonexistence of facts relating to corporations which would not appear from a certified copy of any documents on file in his office shall be taken and received in all courts,

public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated.

History. Acts 1965, No. 576, § 94;
A.S.A. 1947, § 64-118.

4-26-107. Disapproval of articles and other documents by Secretary of State — Appeals.

(a) If the Secretary of State shall fail to approve any articles of incorporation, amendment, merger, consolidation, or dissolution, or any other document required by this chapter to be approved by the Secretary of State before the same shall be filed in his office, he shall give, within ten (10) days after the delivery thereof to him, written notice of his disapproval to the person or corporation delivering the same, specifying the reasons therefor.

(b)(1) From the disapproval of the Secretary of State the person or corporation may appeal to the Circuit Court of Pulaski County by filing with the clerk of the court a petition setting forth:

- (A) A copy of the articles or other document sought to be filed;
- (B) A copy of the written disapproval by the Secretary of State; and
- (C) The basis for challenging the legality of the ruling of the Secretary of State.

(2) Upon the filing of the petition, the matter shall be tried de novo by the court. The court shall either sustain the action of the Secretary of State or direct him to take such action as the court may deem proper.

(c) Appeals from all final orders and judgments entered by the circuit court under this section in review of any ruling or decision of the Secretary of State may be taken as in other civil actions.

History. Acts 1965, No. 576, § 93;
A.S.A. 1947, § 64-120.

SUBCHAPTER 2 — FORMATION AND POWERS OF CORPORATIONS

SECTION.

- 4-26-201. Incorporators.
- 4-26-202. Articles of incorporation.
- 4-26-203. Organization meeting of incorporators.
- 4-26-204. General powers.
- 4-26-205. Defense of ultra vires.

SECTION.

- 4-26-206. Prerequisite to commencing business.
- 4-26-207. Certificate of corporate existence — Prima facie evidence.

Cross References. Fairs and associations of public nature, § 4-28-101.

Effective Dates. Acts 1965, No. 576, § 98: effective at midnight on Dec. 31, 1965.

Acts 1968 (1st Ex. Sess.), No. 48, § 3: Feb. 21, 1968. Emergency clause provided: "It is hereby found and declared by

the General Assembly of Arkansas that the existing statutory authorization for business corporations to make gifts and donations of corporate assets for public, governmental, scientific, educational and charitable purposes are unduly restrictive and are preventing corporations from making gifts and donations to governmen-

tal and charitable agencies; that there is an urgent need to encourage and authorize such gifts and donations for public and charitable purposes. Therefore, an emergency is declared to exist, and this

Act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval."

RESEARCH REFERENCES

ALR. Validity of variations from one share-one vote rule under modern corporate law. 3 ALR 4th 1204.

Validity of stockholders' agreement allegedly infringing on directors' management power. 15 ALR 4th 1078.

Attorney's liability for improper or ineffective incorporation of client. 40 ALR 4th 535.

Reinstatement of repealed, forfeited, expired, or suspended corporate charter as validating interim acts of corporation. 42 ALR 4th 392.

Validity, construction, and effect of provision in charter or bylaws requiring super-majority vote. 80 ALR 4th 667.

Am. Jur. 18A Am. Jur. 2d, Corp., §§ 150 et seq., 211.

18B Am. Jur. 2d, Corp., § 1990 et seq.

Ark. L. Rev. Organizing the Corporation with an Eye to the Tax Future, 17 Ark. L. Rev. 409.

De Facto Merger in the Corporate Partnership Context, 27 Ark. L. Rev. 737.

C.J.S. 18 C.J.S., Corp., § 23 et seq.

19 C.J.S., Corp., § 933 et seq.

4-26-201. Incorporators.

One (1) or more natural persons of the age of twenty-one (21) years or more may act as incorporators of a corporation by executing and filing in accordance with § 4-26-1201 articles of incorporation for the corporation.

History. Acts 1965, No. 576, § 54; A.S.A. 1947, § 64-501.

CASE NOTES

ANALYSIS

Compliance.

Contracts.

Duties.

Compliance.

In order to exempt any association of persons from personal liability for the debts of a proposed corporation, they must comply fully with the act under which the corporation is created, a partial compliance is not sufficient, and unless they comply fully, business performed by them constitutes them a partnership. *Gazette Publishing Co. v. Brady*, 204 Ark. 396, 162 S.W.2d 494 (1942) (decision under prior law).

Contracts.

A corporation may adopt contracts made for it by its promoters in advance of

organization as effectually as if made by it after organization and, after accepting the benefits of such contracts, cannot repudiate the accompanying burdens and obligations. *Layton v. Central States Lead & Zinc Co.*, 147 Ark. 355, 227 S.W. 415 (1921) (decision under prior law).

Corporation accepting benefits of contract of promoters is liable under it. *Brace v. Oil Fields Corp.*, 173 Ark. 1128, 293 S.W. 1041 (1927) (decision under prior law).

Promoters of an insurance corporation who executed a note and signed names thereto prior to its incorporation as officers without stating for whom or what company they were acting were personally liable for the payment of the note according to its terms. *Shanks v. Clark*, 175 Ark. 883, 300 S.W. 453 (1927) (decision under prior law).

Duties.

It is the duty of promoters to give correct information to prospective purchasers of stock. *Porter v. Morris*, 131 Ark. 382, 199 S.W. 106 (1917) (decision under prior law).

4-26-202. Articles of incorporation.

(a) The articles of incorporation, which shall be duly signed by all of the incorporators, shall set forth:

- (1) The name of the corporation;
- (2) The period of duration, which may be perpetual;
- (3) The purpose for which the corporation is organized;
- (4) The aggregate number of shares which the corporation shall have authority to issue; if the shares are to consist of one (1) class only, the par value of each of the shares or a statement that all of the shares are without par value; or, if the shares are to be divided into classes, the number of shares of each class and a statement of the par value of the shares of each class or that the shares are to be without par value;
- (5) If the shares are to be divided into classes, the designation of each class and a statement of the preferences, limitations, and relative rights in respect to the shares of each class;
- (6) If the corporation is to issue the shares of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences as between series insofar as the series are to be fixed in the articles of incorporation and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series;
- (7) A statement that the corporation will not commence business until consideration of the value of at least three hundred dollars (\$300) has been received for the issuance of shares;
- (8) Any provisions limiting or denying to shareholders the preemptive right to acquire additional or treasury shares of the corporation;
- (9) Any provision not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision which under this chapter is required or permitted to be set forth in the bylaws;
- (10) The address, including street and number, if any, of its initial registered office, and the name of its initial registered agent at the address;
- (11) The number of directors constituting the initial board of directors who are to serve as directors until the next annual meeting of shareholders or until their successors be elected and qualify. If the number of directors constituting the initial board is either one (1) or two (2), then a statement shall also be included in the article specifying the number of directors to be elected at the annual meeting, or special meeting called for that purpose, of the shareholders next following the time when the shares of the corporation become owned of record by more than one (1) or two (2) shareholders as the case may be;
- (12) The name and address of each incorporator.

(b) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.

History. Acts 1965, No. 576, § 55;
A.S.A. 1947, § 64-502.

CASE NOTES

ANALYSIS

Form.
Residence.

Form.

No particular form of bylaws is required. *Myar v. Poe*, 79 Ark. 465, 95 S.W. 1005 (1906) (decision under prior law).

Residence.

The domestic corporation acquired a

residence in a county by setting forth in its articles of incorporation the address of its initial registered office and the name of its initial registered agent at such address. *Missouri Pac. R.R. v. W.S. Fox & Sons, Inc.*, 251 Ark. 247, 472 S.W.2d 726 (1971).

Cited: *J.M. Prods., Inc. v. Arkansas Capital Corp.*, 51 Ark. App. 85, 910 S.W.2d 702 (1995).

4-26-203. Organization meeting of incorporators.

(a) After the filing of the articles of incorporation with the Secretary of State as required in § 4-26-1201, an organization meeting of the incorporators shall be held either within or without this state, at the call of a majority of the incorporators, for the purpose of electing directors and the transaction of such other business as may come before the meeting.

(b) The incorporators calling the meeting shall give at least three (3) days' notice thereof by mail to the remaining incorporators. The notice shall state the time and place of the meeting. However, the giving of the notice may be waived by the incorporators entitled to receive the notice.

History. Acts 1965, No. 576, § 58;
A.S.A. 1947, § 64-505.

4-26-204. General powers.

(a) Each corporation, by virtue of its existence as such, shall have power:

(1) To have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation;

(2) To sue and be sued, in its corporate name;

(3) To have a corporate seal which may be altered at will and to use the seal by causing it or a facsimile to be impressed or affixed or in any other manner reproduced; but the use of a seal by the corporation will be optional and not mandatory;

(4) To elect or appoint officers and agents of the corporation and define their duties and fix their compensation;

(5) To make, alter, and repeal bylaws not inconsistent with its articles of incorporation or with the laws of this state for the administration and regulation of the affairs of the corporation;

(6) Subject to any restrictions in its articles of incorporation, to make contributions or gifts to corporations, trusts, community chests, funds, foundations, or associations organized and operated exclusively for religious, charitable, literary, scientific, or educational purposes or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, and may make contributions or gifts to governmental units and agencies to be used for any lawful purpose when these contributions or gifts are authorized or approved by its board of directors;

(7) In time of war or engagement of the nation's armed forces in hostile military operations, to transact any lawful business in aid of the United States in connection therewith;

(8) Subject to any restrictions in its articles of incorporation, to invest its funds as it sees fit, including specifically and without limiting the generality of the foregoing, the power to acquire controlling interests in, or the entire ownership of, other corporations whether engaged in the same or different kinds of business;

(9) To cease its corporate activities and surrender its corporate franchise.

(b) To effectuate the purposes stated in its articles of incorporation, and subject to any limitation prescribed by this chapter or by its articles of incorporation, every corporation shall also have power:

(1) To acquire, by purchase, lease, gift, will, or otherwise, and to own, hold, improve, use, and otherwise deal in and with real and personal property, or any interest therein, wherever situated;

(2) To sell, convey, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;

(3) To enter into contracts of guaranty or suretyship or make other financial arrangements for its customers, suppliers, subsidiaries, and others with whom it transacts business; also, where in the opinion of the directors action should be taken to promote good employer-employee relationships, it may make undertakings of such character for the benefit of any of its employees. The term "employees" is not to include any officer or director or any person holding as much as ten percent (10%) of the shares entitled to vote for the election of directors;

(4) To procure for its benefit insurance on the life of any employee or officer whose death might cause financial loss to the corporation, and to this end, the corporation is deemed to have an insurable interest in its employees and officers;

(5) To acquire, by purchase, subscription, gift, will, or otherwise, and to own, hold, vote, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with any or all of the shares or other interests in, or obligations of, other domestic or foreign corporations or the obligations of any associations, partnerships, or individuals or any direct or indirect obligations of the United States or of any government, state, territory, governmental district, or municipality or of any instrumentality thereof;

(6) To enter into general partnership agreements with another corporation or corporations whether organized under the laws of this

state or otherwise or with any individual, individuals, or partnerships but only on condition that the action is authorized by the articles of incorporation or, in the absence of such charter authorization, by the holders of at least a majority of the outstanding shares of each class entitled at that time to vote at an election of directors; and, even though no charter authority therefor exists, a corporation, without prior stockholders' approval and merely on the authorization of its board of directors, may:

(A) Become a limited partner; or

(B) Enter into a joint adventure arrangement with any domestic or foreign corporation or corporations or any individual, individuals, or partnership, provided the joint adventure contemplates:

(i) The joint prosecution of a single undertaking; or

(ii) The prosecution of successive joint undertakings or business activities over a period not exceeding five (5) years; the joint activities after the expiration of this period to be restricted to acts of liquidation, including the completion of any projects commenced during the five-year period; and the joint arrangement not to be extended except under stockholders' authority as above provided;

(7) To make contracts and incur liabilities, borrow money, issue its notes, debentures, bonds, and other obligations, and secure any of its obligations by mortgage, pledge, security interest, or other form of encumbrance upon all or any of its property including after-acquired property, franchises, and income;

(8) To lend money for its corporate purposes, including the power to lend money to its employees where such action tends to promote good employer-employee relationship; to invest its funds from time to time in such manner as may be approved by the board;

(9) To pay pensions and establish pension plans, pension trusts, profit-sharing plans, stock bonus plans, stock option plans, and other incentive plans for any or all of its directors, officers, and employees;

(10) To conduct its business, carry on its operations, and have offices and exercise the powers granted by this chapter anywhere in the world;

(11) To have and exercise all additional powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

(c) It shall not be necessary to set forth in the articles of incorporation any of the powers enumerated in this section, but the powers shall exist and may be exercised by the corporation, whether or not set forth in the articles.

History. Acts 1965, No. 576, § 4; 1968 (1st Ex. Sess.), No. 48, § 1; A.S.A. 1947, § 64-104.

corporation, compensation, Ark. Const., Art. 12, § 9.

Unfair Practices Act, § 4-75-201 et seq.

Cross References. Property, taking by

RESEARCH REFERENCES

Ark. L. Rev. Note, Hall v. Staha: Arkansas Courts Adopt the Business Judgment Rule as a Tool of Judicial Review and Analyze the Issue of Excessive Executive Compensation, 47 Ark. L. Rev. 959.

UALR L.J. Webber, Arkansas Corporate Fiduciary Standards — Interested Directors' Contracts and the Doctrine of Corporate Opportunity, 5 UALR L.J. 39.

CASE NOTES

ANALYSIS

Accommodation paper.

Contracts.

Conveyances.

Indebtedness.

Mergers.

Right to sue.

Accommodation Paper.

Private corporation, with the consent of all its stockholders and directors, may execute commercial paper as an accommodation. *Murphy v. Arkansas & La. Land & Imp. Co.*, 97 F. 723 (W.D. Ark. 1899) (decision under prior law).

Contracts.

The legislature is authorized to regulate the powers of corporations to enter into contracts when the regulation would not be subversive to any vested rights or the objects of the charter. *Arkansas Stave Co. v. State*, 94 Ark. 27, 125 S.W. 1001 (1910) (decision under prior law).

Conveyances.

There is a presumption in favor of power of corporation to make conveyances. *Cotton v. White*, 131 Ark. 273, 199 S.W. 116 (1917) (decision under prior law).

Seal of corporation affixed to deed constituted a prima facie showing that corporation was regularly incorporated and that the officers were authorized to make the deed. *Oliver v. Henry Quellmalz Lumber & Mfg. Co.*, 170 Ark. 1029, 282 S.W. 355 (1926) (decision under prior law).

Indebtedness.

The authority of the officers of a private corporation to execute a mortgage for valuable consideration conveying the corporate property to themselves individually could not be questioned by subsequent creditors of the corporation, where neither the stockholders nor existing cred-

itors complained. *Stallings v. Galloway-Kennedy Co.*, 171 Ark. 24, 283 S.W. 41 (1926) (decision under prior law).

Mergers.

Evidence that two corporations formed a partnership, sold their merchandise to the partnership, and appointed one person as manager of the partnership to handle all merchandising and accounting operations established a prima facie case of de facto merger of the corporations entitling minority stockholders to be paid for their stock. *Pratt v. Ballman-Cummings Furn. Co.*, 254 Ark. 570, 495 S.W.2d 509 (1973), aff'd, 261 Ark. 396, 549 S.W.2d 270 (1977).

Right to Sue.

Fact that two corporations have directors or other officers in common does not of itself prevent one from maintaining an action at law against the other. *G.W. Jones Lumber Co. v. Wisarkana Lumber Co.*, 125 Ark. 65, 187 S.W. 1068 (1916) (decision under prior law).

Corporation which has failed to file report and pay franchise tax may sue so long as the attorney general has not proceeded to annul its charter. *Jones v. Bank of Commerce*, 131 Ark. 362, 199 S.W. 103 (1917) (decision under prior law).

Where an action is commenced by a corporation after its charter has been forfeited, subsequent reinstatement is not retroactive and does not vest the corporation with a right to prosecute the action. *Sulphur Springs Recreational Park v. Camden*, 247 Ark. 713, 447 S.W.2d 844 (1969) (decision under prior law).

Cited: *James v. J.F.K. Carwash, Inc.*, 275 Ark. 141, 628 S.W.2d 299 (1982); *First Com. Bank v. Walker*, 333 Ark. 100, 969 S.W.2d 146 (1998); *Marcum v. Wengert*, 344 Ark. 153, 40 S.W.3d 230 (2001).

4-26-205. Defense of ultra vires.

(a) No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do the act or to make or receive the conveyance or transfer.

(b) However, the lack of capacity or power may be asserted:

(1) In a proceeding by a shareholder against the corporation to enjoin the doing of any act or acts or the transfer of real or personal property by or to the corporation. If the unauthorized acts or transfer sought to be enjoined are being, or are to be, performed or made pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of the contract, and in so doing, may allow to the corporation or to the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of the contract; but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained;

(2) In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative or through shareholders in a representative or derivative suit against the incumbent or former officers or directors of the corporation;

(3) In a proceeding by the Attorney General, as provided in this chapter, to dissolve the corporation or in a proceeding by the Attorney General to enjoin the corporation from the transaction of unauthorized business.

History. Acts 1965, No. 576, § 6;
A.S.A. 1947, § 64-106.

CASE NOTES**ANALYSIS**

Applicability.
Actions within authority.
Benefits of contract.
Defense.
Standing.

Applicability.

Ultra vires does not apply to torts. *Sullivan v. Arkansas Valley Bank*, 176 Ark. 278, 2 S.W.2d 1096 (1928) (decision under prior law).

Actions Within Authority.

Where a corporation was authorized to buy, own, sell and lease real estate, its agreement to pay a debt of a contractor employed by it to paint a building it was

occupying to prevent a materialman from filing a lien was not ultra vires. *Becker Provision Co. v. Parker Hdwe. Co.*, 146 Ark. 539, 226 S.W. 177 (1920) (decision under prior law).

Benefits of Contract.

Where an ultra vires contract entered into by a corporation has been fully performed by the other party and the corporation has had the benefit thereof, the contract is binding on the corporation. *Becker Provision Co. v. Parker Hdwe. Co.*, 146 Ark. 539, 226 S.W. 177 (1920) (decision under prior law).

Where an oil company purchased pipe and got the benefit of it, it is immaterial in an action on the note representing the

purchase price, which it signed as surety, whether it had authority to make or endorse the note, since it would be liable for the purchase price regardless of such authority. *El Dorado Pipe & Supply Co. v. Penguin Oil Co.*, 174 Ark. 843, 296 S.W. 713 (1927) (decision under prior law).

Defense.

Individuals who entered into a partnership agreement with a corporation are liable on a partnership debt contracted by it in furtherance of the purpose for which the corporation was organized and cannot take advantage of the fact that the contract was beyond the powers of the corporation. *Hayes-Thomas Grain Co. v. A.F. Wilcox Contracting Co.*, 144 Ark. 621, 223 S.W. 357 (1920) (decision under prior law).

Where a corporation, sued on an alleged contract, seeks to avail itself of the defense of ultra vires, it must plead that defense; but where it relies on the lack of authority of its officer to make such a contract, it may deny that it made the contract and place upon the plaintiff the burden of showing the officer's authority. *Anderson-Tully Co. v. Gillett Lumber Co.*, 155 Ark. 224, 244 S.W. 26 (1922) (decision under prior law).

Whether a corporation's contract is ultra vires will not be considered on appeal in the absence of evidence of its charter powers. *Crow Oil & Gas Co. v. Drain*, 171 Ark. 817, 286 S.W. 971 (1926) (decision under prior law). *

A lumber corporation, seeking to avail itself of ultra vires of indemnity agreement executed by it in that it was not authorized by the articles of incorporation, must plead such want of power as a special defense. *Lena Lumber Co. v. Brickhouse*, 173 Ark. 348, 292 S.W. 1007 (1927) (decision under prior law).

The promissory note held not invalid as an ultra vires instrument since none of the statutory conditions were present for an assenting stockholder to assert the defense of ultra vires and, accordingly, the underlying personal guarantees were not invalid. *James v. J.F.K. Carwash, Inc.*, 275 Ark. 141, 628 S.W.2d 299 (1982).

Standing.

Where the security agreement covering the pledge of all of a moving company's assets by the company's sole shareholder was properly filed and therefore gave constructive notice to all subsequent creditors, the trustee in bankruptcy lacked standing to assert an ultra vires defense against the assignee of the security agreement. *Putnam Realty, Inc. v. Terminal Moving & Storage Co.*, 631 F.2d 547 (8th Cir. 1980).

Cited: *National Sur. Corp. v. Crystal Springs Fishing Village, Inc.*, 326 F. Supp. 1171 (W.D. Ark. 1971); *Marcum v. Wengert*, 344 Ark. 153, 40 S.W.3d 230 (2001).

4-26-206. Prerequisite to commencing business.

A corporation shall not transact any business or incur any indebtedness, except such as shall be incidental to its organization or to obtaining subscriptions to or payment for its shares until there has been paid in for the issuance of shares consideration of the value of at least three hundred dollars (\$300).

History. Acts 1965, No. 576, § 57; A.S.A. 1947, § 64-504.

RESEARCH REFERENCES

Ark. L. Rev. Carnes and Banks, Capitalization Under the Financial Provisions

of the Arkansas Business Corporation Act, 38 Ark. L. Rev. 802.

4-26-207. Certificate of corporate existence — Prima facie evidence.

(a) At any time after the incorporators have filed articles of incorporation with the Secretary of State, he shall, upon request and upon payment of the fee prescribed by law, certify whether, as disclosed by the records in his office, the existence of the corporation has terminated by reason of voluntary or involuntary dissolution, merger, consolidation, franchise tax default, or otherwise.

(b) If the certificate identifies the corporation by its corporate name, and by showing the names of the original incorporators and the date the original articles of incorporation were filed, it shall be admissible in evidence, and the certifications therein contained shall be deemed prima facie true.

History. Acts 1965, No. 576, § 56;
A.S.A. 1947, § 64-503.

CASE NOTES

ANALYSIS

Collateral attack.

Sufficiency of certificate.

Collateral Attack.

A corporation's right to exist cannot be attacked collaterally. *Searcy v. Yarnell*, 47 Ark. 269, 1 S.W. 319 (1886); *Cairo T. & S.R.R. v. Arkansas Short Line*, 172 Ark. 317, 288 S.W. 715 (1926) (preceding decisions under prior law).

Sufficiency of Certificate.

Where the validity of certificate from the Secretary of State stating that plain-

tiff was a corporation in good standing at all times pertinent to the action was uncontroverted except for plaintiff's failure to file a change of address as to its registered office or agent, but defendants demonstrated no prejudice as a result of the change of address, certificate was sufficient to prove the corporation's legal existence and thus plaintiff had the legal capacity to sue. *Delta Oil Co. v. Catalani*, 276 Ark. 66, 633 S.W.2d 1 (1982).

SUBCHAPTER 3 — AMENDMENT OF ARTICLES OF INCORPORATION

SECTION.

4-26-301. Amendments authorized.

4-26-302. Procedure.

4-26-303. Voting by shareholder classes.

4-26-304. Articles of amendment.

4-26-305. Filing of articles of amendment.

SECTION.

4-26-306. Restatement of articles of incorporation.

4-26-307. Amendment of articles of incorporation in reorganization proceedings.

Effective Dates. Acts 1965, No. 576, § 98: effective at midnight on Dec. 31, 1965.

RESEARCH REFERENCES

C.J.S. 18 C.J.S., Corp., § 61.

4-26-301. Amendments authorized.

(a) A corporation may amend its articles of incorporation, from time to time, in any and as many respects as may be desired, so long as its articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making the amendment, and, if a change in shares or the rights of shareholders or an exchange, reclassification, or cancellation of shares or rights of shareholders is to be made, such provisions as may be necessary to effect the change, exchange, reclassification, or cancellation.

(b) In particular, and without limitation upon the general power of amendment, a corporation may amend its articles of incorporation, from time to time, so as to:

- (1) Change its corporate name;
- (2) Change its period of duration;
- (3) Change, enlarge, or diminish its corporate purposes;
- (4) Increase or decrease the aggregate number of shares, or shares of any class, which the corporation has authority to issue;
- (5) Increase or decrease the par value of the authorized shares of any class having a par value, whether issued or unissued;
- (6) Exchange, classify, reclassify, or cancel all or any part of its shares, whether issued or unissued;
- (7) Change the designation of all or any part of its shares, whether issued or unissued, and to change the preferences, limitations, and the relative rights in respect to all or any part of its shares, whether issued or unissued;
- (8) Change shares having a par value, whether issued or unissued, into the same or a different number of shares without par value; and to change shares without par value, whether issued or unissued, into the same or a different number of shares having a par value;
- (9) Change the shares of any class, whether issued or unissued, and whether with or without par value, into a different number of shares of the same class or into the same or a different number of shares, either with or without par value, of other classes;
- (10) Create new classes of shares having rights and preferences either prior and superior or subordinate and inferior to the shares of any class then authorized, whether issued or unissued;
- (11) Cancel or otherwise affect the right of the holders of the shares of any class to receive dividends which have accrued but have not been declared;
- (12) Divide any preferred or special class of shares, whether issued or unissued, into series and fix and determine the designations of the

series and the variations in the relative rights and preferences as between the shares of such series;

(13) Authorize the board of directors to establish, out of authorized but unissued shares, series of any preferred or special class of shares and fix and determine the relative rights and preferences of the shares of any series so established;

(14) Authorize the board of directors to fix and determine the relative rights and preferences of the authorized but unissued shares of series theretofore established in respect of which either the relative rights and preferences have not been fixed and determined or the relative rights and preferences theretofore fixed and determined are to be changed;

(15) Revoke, diminish, or enlarge the authority of the board of directors to establish series out of authorized but unissued shares of any preferred or special class and fix and determine the relative rights and preferences of the shares of any series so established;

(16) Limit, deny, or grant to shareholders of any class the preemptive right to acquire additional or treasury shares of the corporation, whether then or thereafter authorized;

(17) Restate, in the entirety, its articles of incorporation.

History. Acts 1965, No. 576, § 59;
A.S.A. 1947, § 64-506.

RESEARCH REFERENCES

UALR L.J. Survey—Corporations, 10
UALR L.J. 549.

CASE NOTES

Cited: Franklin Elec. Co. v. Heath, 261
Ark. 269, 547 S.W.2d 755 (1977).

4-26-302. Procedure.

(a) Amendments to the articles of incorporation shall be made in the following manner:

(1) The board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting;

(2) Written or printed notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders. If the meeting is an annual meeting, the proposed amendment or a summary shall be included in the notice of the annual meeting;

(3) At this meeting a vote of the shareholders entitled to vote thereon shall be taken on the proposed amendment;

(4) The proposed amendment shall be adopted upon receiving the affirmative vote of the holders of at least two-thirds ($\frac{2}{3}$) of the shares entitled to vote thereon unless any class of shares is entitled to vote as a class, in which event the proposed amendment shall be adopted upon receiving the affirmative vote of the holders of at least two-thirds ($\frac{2}{3}$) of the shares of each class of shares entitled to vote as a class and of the total shares entitled to vote thereon.

(b) Any number of amendments may be submitted to the shareholders and voted upon by them at one (1) meeting.

History. Acts 1965, No. 576, § 60;
A.S.A. 1947, § 64-507.

RESEARCH REFERENCES

UALR L.J. Survey—Corporations, 10
UALR L.J. 549.

CASE NOTES

Cited: Franklin Elec. Co. v. Heath, 261
Ark. 269, 547 S.W.2d 755 (1977).

4-26-303. Voting by shareholder classes.

The holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the articles of incorporation, if the amendment would:

(1) Increase or decrease the aggregate number of authorized shares of the class;

(2) Increase or decrease the par value of the shares of the class;

(3) Effect an exchange, reclassification, or cancellation of all or part of the shares of the class;

(4) Effect an exchange or create a right of exchange of all or any part of the shares of another class into the shares of the class;

(5) Change the designations, preferences, limitations, or relative rights of the shares of the class;

(6) Change the shares of the class, whether with or without par value, into the same or a different number of shares, either with or without par value, of the same class or another class;

(7) Create a new class of shares having rights and preferences prior and superior to the shares of the class, or increase the rights and preferences of any class having rights and preferences prior or superior to the shares of the class;

(8) In the case of a preferred or special class of shares, divide the shares of the class into series and fix and determine the designation of the different series and the variations in the relative rights and preferences between the shares of the separate series or authorize the board of directors to do so;

(9) Limit or deny the existing preemptive rights of the shares of the class;

(10) Cancel or otherwise affect dividends on the shares of the class which have accrued but have not been declared.

History. Acts 1965, No. 576, § 61;
A.S.A. 1947, § 64-508.

RESEARCH REFERENCES

UALR L.J. Survey—Corporations, 10
UALR L.J. 549.

4-26-304. Articles of amendment.

The articles of amendment shall be verified by at least one (1) of the officials signing them and shall set forth:

- (1) The name of the corporation;
- (2) A copy of the amendment so adopted;
- (3) The date of the adoption of the amendment by the shareholders;
- (4) The number of shares outstanding and the number of shares entitled to vote thereon and, if the shares of any class are entitled to vote thereon as a class, the designation and number of outstanding shares entitled to vote thereon of each such class;

(5) The number of shares voted for and against the amendment, respectively, and if the shares of any class are entitled to vote thereon as a class, the number of shares of each class voted for and against the amendment, respectively;

(6) If the amendment provides for an exchange, reclassification, or cancellation of issued shares and if the manner in which the issued shares shall be effected is not set forth in the amendment, then a statement of the manner in which the issued shares shall be affected;

(7) If the amendment effects a change in the amount of stated capital, then a statement of the manner in which the same is effected and a statement, expressed in dollars, of the amount of stated capital as changed by the amendment.

History. Acts 1965, No. 576, § 62;
A.S.A. 1947, § 64-509.

4-26-305. Filing of articles of amendment.

The articles of amendment shall be executed and filed in accordance with § 4-26-1201.

History. Acts 1965, No. 576, § 63;
A.S.A. 1947, § 64-510.

CASE NOTES

Cited: Franklin Elec. Co. v. Heath, 261 Ark. 269, 547 S.W.2d 755 (1977).

4-26-306. Restatement of articles of incorporation.

Any restatement of the articles of incorporation effected through the amending procedure authorized in this subchapter shall supersede the original articles of incorporation and all antecedent amendments thereto.

History. Acts 1965, No. 576, § 64; A.S.A. 1947, § 64-511.

4-26-307. Amendment of articles of incorporation in reorganization proceedings.

(a) Whenever a plan of reorganization of a corporation has been confirmed by decree or order of a court of competent jurisdiction in proceedings for the reorganization of the corporation, pursuant to the provisions of any applicable statute of the United States relating to reorganizations of corporations, the articles of incorporation of the corporation may be amended in the manner provided in this section, in as many respects as may be necessary to carry out the plan and put it into effect, so long as the articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making the amendment.

(b) In particular and without limitation upon the general power of amendment, the articles of incorporation may be amended for such purpose so as to:

(1) Change the corporate name, period of duration, or corporate purposes of the corporation;

(2) Repeal, alter, or amend the bylaws of the corporation;

(3) Change the aggregate number of shares, or shares of any class, which the corporation has authority to issue;

(4) Change the preferences, limitations, and relative rights in respect of all or any part of the shares of the corporation, and classify, reclassify, or cancel all or any part, whether issued or unissued;

(5) Authorize the issuance of bonds, debentures, or other obligations of the corporation, whether or not convertible into shares of any class or bearing warrants or other evidences of optional rights to purchase or subscribe for shares of any class, and fix the terms and conditions thereof; and

(6) Constitute or reconstitute the board of directors of the corporation and appoint directors and officers in place of or in addition to all or any of the directors or officers then in office.

(c) Amendments to the articles of incorporation pursuant to this section shall be made in the following manner:

(1) Articles of amendment approved by decree or order of the court shall be executed and verified in duplicate by such person as the court shall designate or appoint for the purpose;

(2) The articles of amendment shall set forth the name of the corporation, the amendments of the articles of incorporation approved by the court, the date of the decree or order approving the articles of amendment, the title of the proceedings in which the decree or order was entered, and a statement that the decree or order was entered by a court having jurisdiction of the proceedings for the reorganization of the corporation pursuant to the provisions of an applicable statute of the United States;

(3) The articles of amendment shall be filed in accordance with § 4-26-1201.

(d) An amendment effected under this section shall be binding and operative, without any action thereon by the directors or shareholders, and with the same effect as if the amendment had been adopted by unanimous action of the directors and shareholders of the corporation.

History. Acts 1965, No. 576, § 65;
A.S.A. 1947, § 64-512.

SUBCHAPTER 4 — CORPORATE NAME

SECTION.

4-26-401. Requirements and limitations.

4-26-402. Reservation of name.

4-26-403. Registration of foreign corporation's name.

4-26-404. Renewal of registered name.

SECTION.

4-26-405. Use of fictitious names.

4-26-406. Unlawful use, reservation, or registration of name — Injunction.

Effective Dates. Acts 1965, No. 576,
§ 98: effective at midnight on Dec. 31,
1965.

RESEARCH REFERENCES

ALR. Statute prohibiting use of name descriptive of engineering by business organization not practicing profession of engineering. 13 ALR 4th 676.

Am. Jur. 18A Am. Jur. 2d, Corp., § 273 et seq.

C.J.S. 18 C.J.S., Corp., § 164 et seq.

4-26-401. Requirements and limitations.

The corporate name:

(1) Shall contain the word "Corporation", "Company", or "Incorporated", or shall contain an abbreviation of one of those words; but the name may not end with the word "Company" nor the abbreviation "Co." if the final word or abbreviation is immediately preceded by "and" or any symbol for "and";

(2) Shall not contain any word or phrase which is prohibited by law for the corporation or which indicates or implies that it is organized for any purpose other than one (1) or more of the purposes contained in the articles of incorporation;

(3)(A) Shall not be the same as or confusingly similar to the name of any domestic corporation existing under the laws of this state or any foreign corporation authorized to transact business in this state, or a name the exclusive right to which is, at the time, reserved under § 4-26-402, or the name of a corporation which has in effect a registration of its corporate name under § 4-26-403.

(B) No foreign corporation may be admitted to this state if its corporate name is identical with or confusingly similar to the name of any domestic corporation, or the name of any foreign corporation then admitted to this state, or any name then reserved or registered under § 4-26-402 or § 4-26-403.

History. Acts 1965, No. 576, § 7;
A.S.A. 1947, § 64-107.

CASE NOTES

Cited: Venable v. Becker, 287 Ark. 236,
697 S.W.2d 903 (1985).

4-26-402. Reservation of name.

(a)(1) The exclusive right to the use of a corporate name may be reserved by any person or corporation, foreign or domestic, by filing with the Secretary of State a written application to reserve a specified corporate name.

(2) If the Secretary of State finds that the name is not identical with or confusingly similar to any other name reserved or registered under either this section or § 4-26-403 or the name of any domestic corporation or any foreign corporation admitted to this state, he shall reserve it for the exclusive use of the applicant for a period of six (6) months provided the applicant pays the fee prescribed by law.

(b) The right to the exclusive use of a specified corporate name so reserved may be transferred to any other person or corporation by filing in the office of the Secretary of State a notice of such transfer, executed by the applicant for whom the name was reserved, specifying the name and address of the transferee.

(c) The Secretary of State may, however, revoke any reservation after hearing if of the opinion that the application or any transfer was not made in good faith.

(d) A name reservation under this section may not be renewed, nor shall the same name be reserved on any subsequent application filed by or for the benefit of the original applicant or any person, firm, or corporation identified with such applicant, or any transferee of the original applicant.

History. Acts 1965, No. 576, § 8;
A.S.A. 1947, § 64-108.

4-26-403. Registration of foreign corporation's name.

(a) Any foreign corporation not authorized to transact business in this state may register its corporate name under this chapter, if its corporate name is not the same as or confusingly similar to the name of any domestic corporation existing under the laws of this state or the name of any foreign corporation authorized to transact business in this state or any corporate name reserved or registered under either this section or § 4-26-402.

(b) The registration shall be made by:

(1) Filing with the Secretary of State:

(A) An application for registration executed by the corporation by an officer thereof, setting forth the name of the corporation, the state or territory under the laws of which it is incorporated, the date of its incorporation, a statement that it is carrying on or doing business, and a brief statement of the business in which it is engaged; and

(B) A certificate setting forth that the corporation is in good standing under the laws of the state or territory wherein it is organized, executed by the secretary of state of the state or territory or by such other official as may have custody of the records pertaining to corporations; and

(2) Paying to the Secretary of State the fee prescribed by law.

(c) The registration shall be effective for a period of one (1) year from the date on which the application for registration is filed.

History. Acts 1965, No. 576, § 9;
A.S.A. 1947, § 64-109.

4-26-404. Renewal of registered name.

Any foreign corporation which has in effect a registration of its corporate name may renew the registration from year to year by annually filing an application for renewal setting forth the facts required to be set forth in an original application for registration and a certificate of good standing as required for the original registration and by paying the fee prescribed by law. If the registration has expired, a new application for registration may be filed and granted under § 4-26-403.

History. Acts 1965, No. 576, § 10;
A.S.A. 1947, § 64-110.

4-26-405. Use of fictitious names.

(a) No domestic or foreign corporation shall conduct any business in this state under a fictitious name unless it first files with the Secretary of State, and, in case of a domestic corporation, with the county clerk of the county in which the corporation's registered office is located unless

it is located in Pulaski County, a form supplied or approved by the Secretary of State giving the following information:

(1) The fictitious name under which business is being or will be conducted by the applicant corporation;

(2) A brief statement of the character of business to be conducted under the fictitious name;

(3) The corporate name, state of incorporation and location, giving city and street address, of the registered office in this state of the applicant corporation.

(b)(1) Each form shall be executed, without verification, in duplicate and filed with the Secretary of State.

(2) The Secretary of State shall retain one (1) counterpart; and the other counterpart, bearing the file marks of the Secretary of State, shall be returned to the corporation and, unless its registered office is in Pulaski County, the corporation will file it with the county clerk. An index of such filings shall be maintained in each office.

(3) However, the Secretary of State shall not accept such filing if the proposed fictitious name is the same as or confusingly similar to the name of any domestic corporation, or any foreign corporation admitted to this state, or any name reserved or registered under §§ 4-26-402 and 4-26-403.

(c) Copies of the filed forms, certified by the respective filing officers, shall be admitted in evidence where the question of filing may be material.

(d) A foreign corporation not admitted to this state and authorized to do business in this state may not file under this section.

(e)(1) If, after a filing under this section, the applicant corporation is dissolved, or if a foreign corporation surrenders or forfeits its rights to do business in Arkansas, or if a domestic or foreign corporation ceases to do business in Arkansas under the specified fictitious name, the corporation shall be obligated to file in each of the offices aforesaid, a cancellation of its privilege under this section.

(2) If the cancellation is not filed, the Secretary of State, upon satisfactory evidence, may cancel the privilege. The cancellation shall be certified by the Secretary of State to the county clerk who will file the cancellation without fee.

(f)(1) If a corporation which has not filed under this section becomes a party to any contract, deed, conveyance, assignment, or instrument of encumbrance in which the corporation is referred to exclusively by a fictitious name, the obligations imposed upon the corporation under the instrument and the rights sought to be conferred upon third parties thereunder may be enforced against it. However, the rights accruing to the corporation under the instrument may not be enforced by the corporation in the courts of this state until it complies with this section and pays to the Treasurer of State a civil penalty of three hundred dollars (\$300).

(2) In any suit by a corporation upon an instrument executed after midnight, December 31, 1965, which identifies it exclusively by a

fictitious name, the corporation shall be required to allege compliance with this section.

(g)(1) Compliance with this section does not give a corporation an exclusive right to the use of the fictitious name; and the registration of a fictitious name hereunder will not bar the use of the same name as the corporate name of any domestic corporation or any foreign corporation admitted to this state.

(2) However, this chapter is not intended to bar any aggrieved party in such a situation from applying for equitable relief under principles of fair trade law.

(h) Where a communication, contract, deed, conveyance, assignment, or instrument of encumbrance executed by or in favor of a corporation refers to, or is executed by, the corporation under an assumed name, the assumed name will not be a fictitious name within the meaning of this section if it is reflected in the body of the instrument, or in connection with the signature, that the assumed name represents a division or department of the contracting corporation, or a name assumed by it, the contracting corporation being adequately identified by its true name.

History. Acts 1965, No. 576, § 95;
A.S.A. 1947, § 64-111.

4-26-406. Unlawful use, reservation, or registration of name — Injunction.

Where the use, reservation, or registration of a corporate name is in violation of this chapter, it may, by court decree, be cancelled or enjoined, on the suit of the Attorney General or of any person or corporation injured by the unlawful use, reservation, or registration, notwithstanding the fact that such use, reservation, or registration has been approved by the Secretary of State.

History. Acts 1965, No. 576, § 11;
A.S.A. 1947, § 64-112.

SUBCHAPTER 5 — REGISTERED OFFICES AND AGENTS

SECTION.

4-26-501. Registered office and agent required.

4-26-502. Change of office or agent —
Resignation of agent.

SECTION.

4-26-503. Service of process on corporation.

Effective Dates. Acts 1965, No. 576,
§ 98: effective at midnight on Dec. 31,
1965.

RESEARCH REFERENCES

Am. Jur. 18A Am. Jur. 2d, Corp., § 305 **C.J.S.** 18 C.J.S., Corp., §§ 176, 177.
et seq.

4-26-501. Registered office and agent required.

Each corporation shall have and continuously maintain in this state:

(1) A registered office which may be, but need not be, the same as its principal place of business;

(2) A registered agent, which agent may be either an individual resident in this state whose business office is identical with such registered office, or a domestic corporation, or a foreign corporation authorized to transact business in this state, having a business office identical with such registered office.

History. Acts 1965, No. 576, § 12;
A.S.A. 1947, § 64-113.

4-26-502. Change of office or agent — Resignation of agent.

(a) A corporation may change its registered office or change its registered agent, or both, by executing and filing, in accordance with § 4-26-1201, a statement setting forth:

(1) The name of the corporation;

(2) The address, including street and number, if any, of its then registered office;

(3) If the address of its registered office has changed, the address, including street and number, if any, to which the registered office is to be changed;

(4) The name of its then-registered agent;

(5) If its registered agent has changed, the name of its successor registered agent;

(6) That the address of its registered office and the address of the business office of its registered agent, as changed, will be identical.

(b)(1) The authority of the newly appointed registered agent shall be effective from and after the filing with the Secretary of State of the change notice in duplicate originals.

(2) However, notices, demands, and process directed to the corporation may likewise be served on the predecessor registered agent until a duplicate original bearing the file marks of the Secretary of State of the change notice has also been filed with the county clerk, unless the registered office is located in Pulaski County, in which event no filing with the county clerk is required.

(c)(1) In the event a registered agent for one (1) or more corporations changed the address of his or its business office, which office is the registered office of one (1) or more corporations, the registered office of the corporations may be changed upon the filing by the registered agent in the office of the Secretary of State of a statement setting forth:

- (A) The name of the registered agent;
- (B) The address of the business office of the registered agent before the change;
- (C) The address of the business office of the registered agent after the change;
- (D) The names of the corporations which have designated the agent as their registered agent and which have their registered office at the business office of the registered agent;
- (E) That notice in writing of the change has been mailed by the registered agent to each of these corporations;
- (F) That the address of the registered office of each of these corporations and the address of the business office of the registered agent, as changed, will be identical.

(2) The statement shall be executed in duplicate by the registered agent in his individual name; but, if the agent is a corporation, domestic or foreign, it shall be executed and verified by its president or a vice president and by its secretary or an assistant secretary.

(3) The statement so executed in duplicate shall be delivered to the Secretary of State.

(4) If the Secretary of State finds that it conforms to law, then upon the payment of the fees required under this chapter, he shall endorse upon each of the duplicates tendered for filing, over his signature and official seal, the word "FILED" followed by the date of the filing.

(5) The change of address of the registered office shall become effective upon the filing of the statement by the Secretary of State.

(6) The Secretary of State shall retain in his files one (1) executed copy of the statement, which shall be the ribbon copy of the document if typewritten, and he shall attach to the other filed copy a certificate stating that the instrument is an executed counterpart of a statement filed in his office, giving date of the filing, and return the other copy to the registered agent.

(7) If the new location of the registered office is situated in any county other than Pulaski County, the executed counterpart of the statement filed with the Secretary of State, with his certificate annexed thereto, shall be filed for record within sixty (60) days after the date of its filing with the Secretary of State in the office of the county clerk of the county wherein the registered office is newly located. After recording the statement, the county clerk shall return the statement to the registered agent.

(d)(1) Any registered agent of a corporation may resign as agent by executing a written resignation in duplicate and filing both counterparts with the Secretary of State, one (1) of which shall be promptly mailed or delivered by the Secretary of State to the corporation.

(2) The corporation, thereupon, shall designate a substituted registered agent as provided in subsection (a) of this section.

(3) However, if the corporation fails to file the designation in the county, other than Pulaski County, where it has its registered office, any process served upon the resigning agent shall, despite his resignation, be as effective as if he had not resigned.

History. Acts 1965, No. 576, § 13; 1973, No. 379, § 1; A.S.A. 1947, § 64-114.

4-26-503. Service of process on corporation.

(a)(1) The registered agent so appointed by a corporation shall be an agent of the corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served.

(2) Service of any process, notice, or demand upon a corporate registered agent, as agent, may be had by delivering a copy of the process, notice, or demand to the registered agent, president, the secretary, or an assistant secretary of the corporate registered agent.

(b)(1) Whenever a corporation fails to appoint or maintain a registered agent in this state or whenever its registered agent cannot with reasonable diligence be found at the registered office, or if, after notice of the resignation of a registered agent, it fails to appoint a substituted registered agent, then the Secretary of State shall be an agent of the corporation upon whom any process, notice, or demand may be served.

(2) Service on the Secretary of State of any process, notice, or demand shall be made by delivering to and leaving with him, or with any clerk having charge of the corporation department of his office, duplicate copies of the process, notice, or demand.

(3) In the event any process, notice, or demand is served on the Secretary of State, he shall immediately cause one (1) of the copies to be forwarded by registered mail, addressed to the corporation at its registered office.

(4) Any service so had on the Secretary of State shall be returnable in not less than thirty (30) days.

(5) The Secretary of State shall keep a record of all processes, notices, and demands served upon him under this section and shall record therein the time of such service and his action with reference thereto.

(c) Nothing herein contained shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.

History. Acts 1965, No. 576, § 14; A.S.A. 1947, § 64-115.

Cross References. Service on corporations, §§ 16-58-124 — 16-58-127.

CASE NOTES

Alternative Methods.

Alternative means of serving process, such as the alternative set out in ARCP 4(d)(8)(A), are contemplated under subsection (c). CMS Jonesboro Rehabilita-

tion, Inc. v. Lamb, 306 Ark. 216, 812 S.W.2d 472 (1991).

Cited: Delta Oil Co. v. Catalani, 276 Ark. 66, 633 S.W.2d 1 (1982).

SUBCHAPTER 6 — CORPORATE FINANCE

SECTION.

- 4-26-601. Authorized shares generally — Preferred or special classes.
- 4-26-602. Shares of preferred or special classes — Issuance in series.
- 4-26-603. Subscriptions for shares.
- 4-26-604. Consideration for shares generally.
- 4-26-605. Payment for shares.
- 4-26-606. Payment of expenses of organization, reorganization, financing, etc.
- 4-26-607. Stated capital — Capital surplus — Earned surplus.
- 4-26-608. Signed certificates representing shares.
- 4-26-609. Issuance of fractional shares or scrip.
- 4-26-610. Restrictions on transfer of shares.
- 4-26-611. Acquisition or disposition of corporation's own shares.

SECTION.

- 4-26-612. Treasury shares — Cancellation.
- 4-26-613. Redeemable shares — Restrictions on redemption or purchase.
- 4-26-614. Redeemable shares — Cancellation by redemption or purchase.
- 4-26-615. Reduction of stated capital.
- 4-26-616. Surplus, net profits, and valuation of assets.
- 4-26-617. Dividends — General powers of board.
- 4-26-618. Share dividends.
- 4-26-619. Dividends other than in shares of the corporation.
- 4-26-620. Distributions in partial liquidation.
- 4-26-621. Contractual restriction on dividends.

Cross References. Stocks and bonds, issuance, conditions and restrictions, Ark. Const., Art. 12, § 8.

Effective Dates. Acts 1965, No. 576, § 98: effective at midnight on Dec. 31, 1965.

Acts 1973, No. 409, § 5: became law without Governor's signature, Mar. 21, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that substantial confusion and uncertainty exists with respect to the interpretation of this provision of the aforesaid Act governing restrictive stock purchase agreements, restrictive redemption agreements and restrictive stock option agreements, and that the immediate passage of this act is necessary to provide further legislative guidance in this area. Therefore, an emergency is hereby declared to

exist, and this Act, being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage."

Acts 1987, No. 323, § 6: Mar. 19, 1987. Emergency clause provided: "It is found and declared that the authority of an executive committee of a business corporation to designate and price a series of shares of preferred or special classes of stock is a matter of uncertainty which requires immediate clarification. This Act is immediately necessary in order to facilitate such corporate action by an executive committee within limits prescribed by the board of directors. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

ALR. Stock certificate issued to joint tenants as creating gift inter vivos. 5 ALR 4th 373.

Transfer on corporate books as sufficient for gift of stock. 6 ALR 4th 250.

Propriety of applying minority discount

to value of shares purchased by corporation or its shareholders from minority shareholders. 13 ALR 5th 840.

Lis pendens in suit to compel stock transfer. 48 ALR 4th 731.

Am. Jur. 18A Am. Jur. 2d, Corp., § 423 et seq.

Ark. L. Rev. Sources of Corporate Distributions, 17 Ark. L. Rev. 373.

Tax Considerations of Corporate Distributions, 17 Ark. L. Rev. 434.

Comments on the Dividend and Distribution Provisions of the Arkansas Business Corporation Act, 21 Ark. L. Rev. 476.

Carnes and Banks, Capitalization Under the Financial Provisions of the Arkansas Business Corporation Act, 38 Ark. L. Rev. 802.

C.J.S. 18 C.J.S., Corp., § 192 et seq.

4-26-601. Authorized shares generally — Preferred or special classes.

(a) Each corporation shall have power to create and issue the number of shares stated in its articles of incorporation.

(b) The shares may be divided into one (1) or more classes, any or all of which classes may consist of shares with par value or shares without par value, with such designations, preferences, limitations, and relative rights as shall be stated in the articles of incorporation.

(c) The articles of incorporation may limit or deny the voting rights of the shares of any class subject only to the following exceptions:

(1) The right of any stockholder entitled under Arkansas Constitution, Article 12, Section 8, to vote on a proposal to increase stock or bond indebtedness shall not be denied or limited.

(2) In any instance where a provision of this chapter specifically preserves the right of any class or classes of stock to vote in respect to any corporate action, the right may not be denied or impaired by any provisions of the articles of incorporation.

(d) Without limiting the authority herein contained, a corporation, when so provided in its articles of incorporation, may issue shares of preferred or special classes:

(1) Subject to the right of the corporation to redeem any of those shares at the price fixed by the articles of incorporation for the redemption thereof;

(2) Entitling the holders thereof to cumulative, noncumulative, or partially cumulative dividends;

(3) Having preference over any other class or classes of shares as to the payment of dividends;

(4) Having preference in the assets of the corporation over any other class or classes of shares upon the voluntary or involuntary liquidation of the corporation;

(5) Convertible into shares of any other class, or into shares of any series of the same or any other class, except a class having prior or superior rights and preferences as to dividends or distribution of assets upon liquidation. However, shares without par value shall not be converted into shares with par value unless that part of the stated capital of the corporation represented by such shares without par value

is, at the time of conversion, at least equal to the aggregate par value of the shares into which the shares without par value are to be converted.

History. Acts 1965, No. 576, § 16;
A.S.A. 1947, § 64-201.

RESEARCH REFERENCES

UALR L.J. Survey—Corporations, 10
UALR L.J. 549.

4-26-602. Shares of preferred or special classes — Issuance in series.

(a) If the articles of incorporation so provide, the shares of any preferred or special class may be divided into and issued in series.

(b) If the shares of any such class are to be issued in series, then each series shall be so designated as to distinguish the shares thereof from the shares of all other series and classes.

(c) Any or all of the series of any such class and the variations in the relative rights and preferences as between different series may be fixed and determined by the articles of incorporation, but all shares of the same class shall be identical except as to the following relative rights and preferences, as to which there may be variations between different series:

(1) The rate of dividend, the time of payment of dividends, and the date from which dividends shall be cumulative;

(2) The price at and the terms and conditions on which shares may be redeemed;

(3) The amount payable upon shares in event of involuntary liquidation;

(4) The amount payable upon shares in event of voluntary liquidation;

(5) Sinking fund provisions for the redemption or purchase of shares;

(6) The terms and conditions on which shares may be converted if the shares of any series are issued with the privilege of conversion.

(d)(1) If the articles of incorporation expressly vest such authority in the board of directors, then to the extent that the articles of incorporation have not established series and fixed and determined the variations in the relative rights and preferences as between series, the board of directors shall have authority, in respect to shares to be issued, to divide any or all of such classes into series and, within the limitations set forth in this section and in the articles of incorporation, fix and determine the relative rights and preferences of the shares of any series so established.

(2) In order for the board of directors to establish a series where authority to do so is contained in the articles of incorporation, the board of directors shall adopt a resolution setting forth the designation of the series and fixing and determining the relative rights and preferences

thereof, or so much thereof as shall not be fixed and determined by the articles of incorporation.

(3) Prior to the issue of any shares of a series established through resolution adopted by the board of directors, the corporation shall cause to be executed and filed in accordance with § 4-26-1201 a statement setting forth:

(A) The name of the corporation;

(B) A copy of the resolution establishing and designating the series, and fixing and determining the relative rights and preferences thereof;

(C) The date of adoption of the resolution;

(D) That the resolution was duly adopted by the board of directors.

(4) The resolution of the board of directors and the statement required to be filed pursuant to this section shall not be considered an amendment to the articles of incorporation of the corporation.

History. Acts 1965, No. 576, § 17;
A.S.A. 1947, § 64-202; Acts 1987, No. 323,
§ 1.

RESEARCH REFERENCES

UALR L.J. Survey—Corporations, 10
UALR L.J. 549.

4-26-603. Subscriptions for shares.

(a) No preincorporation or postincorporation subscription is valid unless in writing, signed, and delivered by the subscriber-purchaser.

(b)(1) A valid preincorporation subscription shall be irrevocable for six (6) months unless the terms of the subscription otherwise provide or unless all of the subscribers consent to its earlier revocation.

(2) At any time while a preincorporation subscription is irrevocable or remains unrevoked, it may be accepted by the corporation and, if otherwise conforming to law, shall thereupon become enforceable. The acceptance by a corporation of a subscription shall be evidenced by resolution of the board of directors.

(c)(1) Unless otherwise provided in the subscription agreement, subscriptions for shares, whether made before or after the organization of a corporation, shall be paid in full at such time or in such installments and at such times as shall be determined by the board of directors. Any call made by the board of directors for payment on subscriptions shall be uniform as to all shares of the same class or as to all shares of the same series, as the case may be.

(2) In case of default in the payment of any installment or call when payment is due, the corporation may proceed to collect the amount due in the same manner as any debt due the corporation or after twenty (20) days' demand as provided in this section, the board may declare the subscription and all previous payments thereon forfeited.

(3) The bylaws may prescribe other penalties for failure to pay installments or calls that may become due, but no penalty working a forfeiture of a subscription or of the amounts paid thereon shall be declared as against any subscriber unless the amount due thereon shall remain unpaid for a period of twenty (20) days after written demand has been made. If mailed, such written demand shall be deemed to be made when deposited in the United States mail in a sealed envelope addressed to the subscriber at his last post office address known to the corporation, with postage prepaid.

(4) In the event of the sale of any shares by reason of any forfeiture, the excess of proceeds realized over the amount due and unpaid on those shares shall be paid to the delinquent subscriber or to his legal representative.

(5) If a receiver of the corporation has been appointed, all unpaid subscriptions shall be paid at such times and in such installments as the receiver or the court may direct.

(d) Unless otherwise agreed in writing, it shall be no defense to the enforcement of a preincorporation subscription that no notice was given to the subscriber of his right to participate in selecting the first board of directors, in adopting the first bylaws, or in otherwise perfecting the organization.

(e)(1) The board of directors shall have authority, unless otherwise restricted by the articles of incorporation or bylaws, to determine in good faith whether and upon what terms the obligation of any subscriber shall be released, settled, or compromised.

(2) The total or partial release of a subscription which has been accepted by the corporation is the equivalent of a purchase by the corporation, in whole or pro tanto as the case may be, of the shares in question and is subject to the restrictions set forth in § 4-26-611 relating to such a purchase.

History. Acts 1965, No. 576, § 18;
A.S.A. 1947, § 64-203.

CASE NOTES

ANALYSIS

Applicability.
Conditional agreement.
Default.
Enforcement.
Parol evidence.
Releases.

Applicability.

This section is not applicable when there is an outright purchase of an ongoing corporation's existing stock. *Coyne v. Coyne*, 9 Ark. App. 80, 654 S.W.2d 584 (1983).

Conditional Agreement.

An agreement to take shares in the capital stock of a corporation may depend on a condition precedent or subsequent, as the parties may agree, and they are bound to perform their contract according to their intention as it appears from the language of the contract. *Nowlin v. Memphis Packing Corp.*, 161 Ark. 294, 255 S.W. 1092 (1923) (decision under prior law).

Default.

Under a subscription contract which provided "that default in any payment shall operate as a forfeiture to the company of all payments previously made and

the stock issued therefor," no other remedy for a default in payments is given except a forfeiture of instalments paid. *Denman v. Country Club Realty Co.*, 143 Ark. 502, 220 S.W. 824 (1920) (decision under prior law).

Enforcement.

A preliminary stock subscription contract is a valid agreement to take preferred stock, and after formation of corporation and issuance of preferred stock, corporation can maintain action against subscribers for amount subscribed. *Snodgrass v. E.A. Zander & Co.*, 106 Ark. 462, 154 S.W. 212 (1913) (decision under prior law).

Corporation cannot maintain action on subscription for preferred stock until it has issued or tendered its stock. *Snodgrass v. E.A. Zander & Co.*, 106 Ark. 462, 154 S.W. 212 (1913) (decision under prior law).

Parol Evidence.

Where signed subscription contract

does not express entire agreement, oral testimony may clarify the contract. *Laney v. Faulkner County Hosp.*, 173 Ark. 402, 292 S.W. 364 (1927) (decision under prior law).

Releases.

A voluntary release of a stock subscription by an insolvent company is a fraud upon its creditors, whether their claims arose before or after the stock was issued. *Carter v. Union Printing Co.*, 54 Ark. 576, 16 S.W. 579 (1891) (decision under prior law).

Where capital stock was to be limited to a certain amount but more than that amount was sold and where names of some subscribers were stricken from the subscription list, those who properly signed the list were not released from the payment of their subscription. *Snodgrass v. E.A. Zander & Co.*, 106 Ark. 462, 154 S.W. 212 (1913) (decision under prior law).

4-26-604. Consideration for shares generally.

(a) Shares having a par value may be issued for such consideration expressed in dollars or as a formula or method for determining a price in dollars as shall be fixed or determined from time to time by the board of directors or by any person designated by the board of directors unless the articles of incorporation reserve to the shareholders the right to fix the consideration, however, the consideration shall not be less than the par value of the shares issued therefor. In the event that such right is reserved as to any shares, the shareholders shall, prior to the issuance of such shares, fix the consideration to be received for those shares by a vote of the holders of a majority of all shares entitled to vote thereon.

(b) Shares without par value may be issued for such consideration expressed in dollars or as a formula or method for determining a price in dollars as shall be fixed or determined from time to time by the board of directors or by any person or persons designated by the board of directors unless the articles of incorporation reserve to the shareholders the right to fix the consideration. In the event that such right is reserved as to any shares, the shareholders shall, prior to the issuance of those shares, fix the consideration to be received for those shares, by a vote of the holders of a majority of all shares entitled to vote thereon.

(c) Treasury shares may be disposed of by the corporation for such consideration expressed in dollars as may be fixed from time to time by the board of directors.

(d) That part of the surplus of a corporation which is transferred to stated capital upon the issuance of shares as a share dividend shall be deemed to be pro tanto the consideration for the issuance of the shares.

(e) In the event of a conversion of shares or in the event of an exchange of shares with or without par value for the same or a different number of shares with or without par value, whether of the same or a different class, the consideration for the shares so issued in exchange or conversion shall be deemed to be:

(1) The stated capital then represented by the shares so exchanged or converted; and

(2) That part of surplus, if any, transferred to stated capital upon the issuance of shares for the shares so exchanged or converted; and

(3) Any additional consideration paid to the corporation upon the issuance of shares for the shares so exchanged or converted.

(f) The board of directors, without shareholder approval, may authorize the issuance of shares or securities for the business owned by or for the shares or securities of another corporation in such manner as the board of directors may deem advisable and may cause the acquired business or the acquired shares or securities to be assigned, conveyed, or transferred directly to any subsidiary of the issuing parent corporation, provided the issuing parent corporation owns ninety percent (90%) or more of each class of the outstanding shares of the subsidiary after the transaction.

History. Acts 1965, No. 576, § 19; 1971, No. 240, § 1; 1983, No. 716, § 1; A.S.A. 1947, § 64-204.

4-26-605. Payment for shares.

(a)(1) The consideration paid for the issuance of shares shall consist of money paid, labor done, or property actually received.

(2) Shares may not be issued until the full amount of the consideration, fixed as provided by law, has been paid.

(3) When payment of the consideration for which the shares are to be issued shall have been received by the corporation, the shares shall be deemed to be fully paid and nonassessable.

(b) Neither promissory notes nor the promise of future services shall constitute payment or part payment for shares of a corporation.

(c) In the absence of fraud in the transaction, the judgment of the board of directors or the shareholders, as the case may be, as to the value of the consideration received for shares shall be conclusive.

History. Acts 1965, No. 576, § 20; A.S.A. 1947, § 64-205.

CASE NOTES

ANALYSIS

Applicability.
Adequacy of consideration.
Presumptions.

Applicability.

This section did not apply where the sale of stock was not a new issue by the corporation but rather a sale of already issued and fully paid stock by the stock-

holders; the transfer of these shares of stock was simply a sale of personal property. *Sitton v. Congleton*, 11 Ark. App. 149, 667 S.W.2d 377 (1984).

Adequacy of Consideration.

In determining whether stock issued by a corporation is cancelable because of the inadequacy of consideration originally given for the shares, subsection (c) of this section applies, if the rights of creditors are not involved. *Arkota Indus., Inc. v. Naekel*, 274 Ark. 173, 623 S.W.2d 194 (1981).

Upon action to cancel stock on ground that shares had not been issued for money or property actually received or labor done, where corporation which was set up to perfect and manufacture poultry vaccine, issued stock to veterinarian in return for unperfected formula, directors'

valuation of the formula was conclusive. *Murray v. Murray Labs., Inc.*, 223 Ark. 907, 270 S.W.2d 927 (1954) (decision under prior law).

Where personal property had a cash value equal to the amount of capital stock of a corporation issued therefor, and was accepted in payment therefor by the stockholders and directors of the corporation, it was full payment therefor. *Pollard v. F.W. Reisinger Co.*, 161 Ark. 427, 256 S.W. 382 (1923) (decision under prior law).

Presumptions.

Legal presumption is that sale of stock was free from fraud, deceit, misrepresentation, and abuse of fiduciary relation. *Coats v. Barton*, 25 F.2d 813 (8th Cir. 1928) (decision under prior law).

Cited: *Coyne v. Coyne*, 9 Ark. App. 80, 654 S.W.2d 584 (1983).

4-26-606. Payment of expenses of organization, reorganization, financing, etc.

The reasonable charges and expenses of organization or reorganization of a corporation and the reasonable expenses of and compensation for the sale or underwriting of its shares may be paid or allowed by the corporation out of the consideration received by it in payment for its shares without rendering such shares not fully paid and nonassessable.

History. Acts 1965, No. 576, § 22; A.S.A. 1947, § 64-207.

4-26-607. Stated capital — Capital surplus — Earned surplus.

(a) In case of the issuance by a corporation of shares having a par value, the consideration received shall constitute stated capital to the extent of the par value of such shares, and the excess, if any, of such consideration shall constitute capital surplus.

(b)(1) In case of the issuance by a corporation of shares without par value, the entire consideration received shall constitute stated capital unless the corporation shall determine as provided in this section that only a part thereof shall be stated capital.

(2) Within a period of sixty (60) days after the issuance of any shares without par value, the board of directors may allocate to capital surplus not more than twenty-five percent (25%) of the consideration received for the issuance of the shares.

(3) However, no allocation shall be made of any portion of the consideration received for shares without par value having a preference in the assets of the corporation in the event of involuntary liquidation except the amount, if any, of the consideration in excess of the preference.

(c) If shares have been or shall be issued by a corporation in merger or consolidation or in acquisition of all or substantially all of the outstanding shares or of the property and assets of another corporation, whether domestic or foreign, any amount that would otherwise constitute capital surplus under the foregoing provisions of this section may instead be allocated to earned surplus by the board of directors of the issuing corporation except that its aggregate earned surplus shall not exceed the sum of the earned surpluses as defined in this chapter of the issuing corporation and of all other corporations, domestic or foreign, that were merged or consolidated or of which the shares or assets were acquired.

(d) The stated capital of a corporation may be increased from time to time by resolution of the board of directors directing that all or a part of the surplus of the corporation be transferred to stated capital. The board of directors may direct that the amount of the surplus so transferred shall be deemed to be stated capital in respect of any designated class of shares.

History. Acts 1965, No. 576, § 21;
A.S.A. 1947, § 64-206.

4-26-608. Signed certificates representing shares.

(a)(1) The shares of a corporation shall be represented by certificates signed by the president or a vice-president and the secretary or an assistant secretary of the corporation and, if the corporation has adopted a seal, may be sealed with the seal of the corporation or a facsimile thereof.

(2) The signatures of the president or vice-president and the secretary or assistant secretary upon a certificate may be facsimiles if the certificate is countersigned by a transfer agent, or registered by a registrar, other than the corporation itself or an employee of the corporation.

(3) In case any officer who has signed or whose facsimile signature has been placed upon such certificate shall have ceased to be that officer before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer at the date of its issue.

(b) Each certificate representing shares issued by a corporation which is authorized to issue shares of more than one (1) class shall set forth upon the face or back of the certificate, or shall state, that the corporation will furnish to any shareholder upon request and without charge a full statement of the designations, relative rights, preferences, and limitations of the shares of each class authorized to be issued; and if the corporation is authorized to issue any class of preferred shares in series, the designations, relative rights, preferences, and limitations of each such series so far as they have been fixed; and the authority of the board to designate and fix the relative rights, preferences, and limitations of other series.

(c) Each certificate representing shares shall state upon the face thereof:

- (1) That the corporation is organized under the laws of this state;
 - (2) The name of the person to whom issued;
 - (3) The number and class of shares and the designation of the series, if any, which that certificate represents;
 - (4) The par value of each share represented by that certificate or a statement that the shares are without par value.
- (d) No certificate shall be issued for any share until the consideration therefor, fixed as provided by law, has been fully paid.

History. Acts 1965, No. 576, § 23;
A.S.A. 1947, § 64-208.

CASE NOTES

Nature of Certificate.

Co., 185 Ark. 502, 47 S.W.2d 806 (1931)

Stock certificates are mere evidence of title. *Gates v. Bank of Commerce & Trust* (decision under prior law).

4-26-609. Issuance of fractional shares or scrip.

(a) A corporation may, but shall not be obliged to, issue a certificate for a fractional share and, by action of its board of directors, may issue, in lieu thereof, a scrip in registered or bearer form which shall entitle the holder to receive a certificate for a full share upon the surrender of such scrip aggregating a full share.

(b) A certificate for a fractional share shall, but scrip shall not unless otherwise provided therein, entitle the holder to exercise voting rights, to receive dividends thereon, and to participate in any of the assets of the corporation in the event of liquidation.

(c) The board of directors may cause such scrip to be issued subject to the condition that it shall become void if not tendered to be exchanged for certificates representing full shares before a specified date, or subject to the condition that the shares for which the scrip is exchangeable may be sold by the corporation and the proceeds thereof distributed to the holders of the scrip, or subject to any other conditions which the board of directors may deem advisable.

History. Acts 1965, No. 576, § 24;
A.S.A. 1947, § 64-209.

4-26-610. Restrictions on transfer of shares.

(a)(1) A corporation may provide, in respect to any of its shares which are to be issued, that the future transfer, whether *inter vivos*, by inheritance, or testamentary gift, hypothecation, or other disposition of such shares, shall be subject to restrictions, including purchase options, that do not unreasonably restrain alienation.

(2) These restrictions, among other things, may require a prior offering to the corporation or to one (1) or more of its shareholders at a fair price before the shares may be otherwise transferred or hypothecated.

(3) The same restrictions may be placed by the corporation upon previously issued and outstanding shares but only with the consent of the holders thereof.

(b) No such restrictions shall be valid unless the authority therefor is prescribed in the articles of incorporation or bylaws. In addition to the foregoing, such restrictions on transfer shall not be valid, except as against a person with actual notice of them, unless they are conspicuously noted on each certificate covering the shares affected by these restrictions.

(c)(1) Nothing in this chapter is intended to prevent the holder or holders of any or all of the shares of stock of a corporation, or the corporation in which the holder or holders own any or all of the shares of stock, from subjecting the shares owned by the aforesaid parties by written contract or written agreement to restrictions, including stock options.

(2) Any price or formula for determining the price set by the agreement or contract shall be deemed to be a fair price.

(3) No restriction on transfer shall be valid except as against a person with actual notice thereof unless the restrictions are conspicuously noted on each certificate covering the shares affected by such restrictions.

(d) From and after the date of enactment hereof, unreasonable restraint upon alienation shall have no effect upon the validity or enforceability of any written contract between or among those parties subject to the provisions of subsection (c) of this section.

History. Acts 1965, No. 576, § 26; 1973, No. 409, §§ 1, 2; A.S.A. 1947, §§ 64-211, 64-211.1.

Publisher's Notes. In reference to the term "date of enactment," Acts 1973, No. 409, § 5, provided that the act would be in

full force and effect from and after its passage, and the act became law without the Governor's signature on March 21, 1973.

Cross References. Transfer of corporate shares, § 4-8-301 et seq.

RESEARCH REFERENCES

Ark. L. Rev. Corporations — Stock Transfer Restrictions Systematics, Inc. v.

Mitchell and Act 409 of 1973, 27 Ark. L. Rev. 554.

CASE NOTES

Unenforceable Contracts.

The contract which required the stockholder to retain an investment in the company even after being discharged and to resell his stock to the company at the

original value rather than the fair market value was contrary to this section and unenforceable. Systematics, Inc. v. Mitchell, 253 Ark. 848, 491 S.W.2d 40 (1973).

4-26-611. Acquisition or disposition of corporation's own shares.

(a) A corporation shall not purchase directly or indirectly any of its own shares unless the purchase is authorized by this section and not prohibited by its articles of incorporation.

(b)(1) A corporation may not purchase its own shares:

(A) If there is a reasonable ground for believing that the corporation is, or as a result of such purchase would be, unable to meet its obligations as they become due in the ordinary course of business or that the present fair value of the remaining assets of the corporation would be less than one and one-fourth ($1\frac{1}{4}$) times the amount of its liabilities to creditors; or

(B) If the net assets remaining after the purchase would be less than the aggregate amount payable in the event of voluntary liquidation to the holders of shares having preferential rights to the assets of the corporation; or

(C) If, in respect to purchases out of earned surplus, there are unpaid accrued preferential dividends on shares entitled to priority in respect to dividends over the shares to be purchased.

(2) Subject to these three (3) restrictions, a corporation may purchase its own shares under the conditions set out in subsections (c)-(e) of this section next following.

(c)(1) A corporation may purchase its own shares out of stated capital only in the following instances:

(A) Where the purchase is to eliminate fractional shares; or

(B) Where the purchase is to collect or compromise in good faith any indebtedness to the corporation; or

(C) Where the purchase is to pay dissenting shareholders entitled to payment of their shares under the provisions of this chapter; or

(D) Where the purchase is to effect, subject to the other provisions of this chapter, the retirement of its redeemable shares at not to exceed the redemption price and this purchase does not reduce the net assets below the stated capital remaining after giving effect to the cancellation of the purchased shares.

(2) The purchases permitted under this subsection may be made solely under the authority of the board of directors.

(d) A corporation may purchase its own shares out of unrestricted earned surplus, this purchase to be authorized by the board of directors, and no stockholders' authorization is required.

(e) If the articles of incorporation so permit, the corporation, acting through its directors, may purchase its own shares out of capital surplus other than revaluation surplus. If the articles contain no such authorization but do not prohibit the purchase of such shares from capital surplus, then the corporation, on the authorization of its board of directors and of the holders of at least two-thirds ($\frac{2}{3}$) of all shares of each class, whether or not entitled to vote, voting separately, may purchase the corporation's shares from capital surplus, other than revaluation surplus.

(f) In exercising the powers conferred by this section, it is not required that the shares purchased by the corporation must be purchased pro rata from all of its shareholders, or ratably from the holders of all the shares of any class or series. However, this section is not intended to validate stock purchases designed to effect fraudulent, improper, or unfair liquidating distributions to one (1) or more shareholders; or fraudulently, improperly, or unfairly designed to augment the voting power of any one (1) or more shareholders as against the voting power of other shareholders; or otherwise designed to effect any fraudulent, unfair, or improper discrimination in favor of any one (1) or more shareholders as against others.

(g) A corporation shall be bound by any restrictions contained in its articles of incorporation in respect to the purchase of its own shares, and such articles may wholly prohibit such purchase.

(h) Nonredeemable shares acquired by a corporation under the provisions of this section may be cancelled, held, pledged, sold, transferred, or otherwise disposed of by the corporation. The purchase by a corporation of its redeemable shares shall result in a cancellation of such shares according to § 4-26-614.

(i)(1) Except to the extent permitted under subsection (c) of this section, the purchase by a corporation of its own shares shall not effect a reduction of stated capital unless in connection therewith the stated capital is reduced pursuant to § 4-26-614 or § 4-26-612.

(2) Upon the purchase by a corporation of its own shares out of earned or capital surplus, such surplus account shall be reduced in an amount equal to the purchase price paid therefrom.

(3) The impact upon the surplus accounts of the cancellation of treasury shares through a reduction of stated capital or from the resale of treasury shares is controlled by § 4-26-616(c).

History. Acts 1965, No. 576, § 5;
A.S.A. 1947, § 64-105.

CASE NOTES

ANALYSIS

Closely held corporation.
Promissory notes.
Solvency.

Closely Held Corporation.

A stockholder in a closely held family corporation did not breach his duty to the other shareholders when he gained majority control. *Smith v. Paul*, 317 Ark. 182, 876 S.W.2d 266 (1994).

Promissory Notes.

Where the defendant corporation gave a promissory note secured by the personal guarantees of its stockholders to one of its stockholders for the repurchase of the

corporation's stock at a time when the corporation had no unrestricted earned surplus, the promissory note was not invalid as an ultra vires instrument since none of the statutory conditions were present for an assenting stockholder to assert the defense of ultra vires and, accordingly, the underlying personal guarantees were not invalid. *James v. J.F.K. Carwash, Inc.*, 275 Ark. 141, 628 S.W.2d 299 (1982).

Solvency.

When a corporation purchases its own stock as treasury stock and gives notes or debentures as consideration, then it must remain solvent at the time the notes or

debentures are sought to be enforced, and the fact that the shareholders and the corporation acted in good faith at the time the transaction was entered into does not change the rule; such obligations cannot

be enforced against an insolvent corporation to the detriment of its general creditors. *In re Peoples Loan & Inv. Co.*, 316 F. Supp. 13 (W.D. Ark. 1970).

4-26-612. Treasury shares — Cancellation.

(a) A corporation may at any time, by resolution of its board of directors, cancel all or any part of its treasury shares; and in such event, a statement of cancellation shall be filed as provided in this section.

(b) The statement of cancellation shall be executed and filed in accordance with § 4-26-1201 and verified by one (1) of the officers signing such statement and shall set forth:

(1) The name of the corporation;

(2) The number of treasury shares cancelled by resolution duly adopted by the board of directors, itemized by classes and series, and the date of its adoption;

(3) The aggregate number of issued shares, itemized by classes and series, after giving effect to such cancellation;

(4) The amount, expressed in dollars, of the stated capital of the corporation after giving effect to such cancellation;

(5) A copy of the resolution effecting the cancellation.

(c) When such statement of cancellation is filed in accordance with § 4-26-1201, the stated capital of the corporation shall be deemed to be reduced by that part of the stated capital which was, at the time of the cancellation, represented by the shares so cancelled, and the shares so cancelled shall be restored to the status of authorized but unissued shares.

(d) Nothing contained in this section shall be construed to forbid a cancellation of shares or a reduction of stated capital in any other manner permitted by this chapter.

History. Acts 1965, No. 576, § 68;
A.S.A. 1947, § 64-603.

4-26-613. Redeemable shares — Restrictions on redemption or purchase.

A corporation shall not redeem its shares, or purchase its redeemable shares in lieu of redemption, if at the time of, or as a result of, such transaction:

(1) There is a reasonable ground for believing that the corporation would be unable to meet its obligations as they become due in the ordinary course of business; or

(2) The remaining assets of the corporation would be less than one and one-fourth (1¼) times the amount of its liabilities to creditors; or

(3) If by the redemption or purchase the net assets would be reduced below the aggregate amount payable to the holders of shares to remain

outstanding which have prior or equal rights to the assets of the corporation upon dissolution; or

(4) If there exist any unpaid accrued preferential dividends with respect to any shares having priority as to dividends over the shares to be redeemed or purchased.

History. Acts 1965, No. 576, § 66;
A.S.A. 1947, § 64-601.

4-26-614. Redeemable shares — Cancellation by redemption or purchase.

(a) When redeemable shares of a corporation are redeemed or purchased by the corporation, the redemption or purchase shall effect a cancellation of the shares, and a statement of cancellation shall be filed as provided in this section.

(b) Upon cancellation, the shares shall be restored to the status of authorized but unissued shares unless the articles of incorporation provide that such shares when redeemed or purchased shall not be reissued, in which case the filing of the statement of cancellation shall constitute an amendment to the articles of incorporation and shall reduce the number of shares of the class so cancelled which the corporation is authorized to issue by the number of shares so cancelled.

(c) The statement of cancellation shall be executed and filed in accordance with § 4-26-1201 and verified by one (1) of the officers signing such statement and shall set forth:

(1) The name of the corporation;

(2) The number of redeemable shares cancelled through redemption or purchase, itemized by classes and series;

(3) The aggregate number of issued shares, itemized by classes and series, after giving effect to such cancellation;

(4) The amount, expressed in dollars, of the stated capital of the corporation after giving effect to such cancellation;

(5) If the articles of incorporation provide that the cancelled shares shall not be reissued, then the number of shares which the corporation has authority to issue, itemized by classes and series, after giving effect to such cancellation.

(d) When this statement of cancellation is filed in accordance with § 4-26-1201, the stated capital of the corporation shall be deemed to be reduced by that part of the stated capital which was, at the time of the cancellation, represented by the shares so cancelled.

(e) Nothing contained in this section shall be construed to forbid a cancellation of shares or a reduction of stated capital in any other manner permitted by this chapter.

History. Acts 1965, No. 576, § 67;
A.S.A. 1947, § 64-602.

4-26-615. Reduction of stated capital.

(a) If all or part of the stated capital of a corporation is represented by shares without par value, the stated capital of the corporation may be reduced in the following manner:

(1) The board of directors shall adopt a resolution setting forth the amount of the proposed reduction and the manner in which the reduction shall be effected and directing that the question of that reduction be submitted to a vote at a meeting of shareholders which may be either an annual or a special meeting;

(2) Written or printed notice stating that the purpose or one (1) of the purposes of the meeting is to consider the question of reducing the stated capital of the corporation in the amount and manner proposed by the board of directors shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders;

(3) At such meeting a vote of the shareholders entitled to vote thereon shall be taken on the question of approving the proposed reduction of stated capital, which shall require for its adoption the affirmative vote of the holders of at least a majority of the shares entitled to vote thereon.

(b) When a reduction of the stated capital of a corporation has been approved as provided in this section, a statement shall be executed and filed in accordance with § 4-26-1201, which statement shall be verified by one (1) of the officers signing the statement and shall set forth:

(1) The name of the corporation;

(2) A copy of the resolution of the shareholders approving such reduction and the date of its adoption;

(3) The number of shares outstanding and the number of shares entitled to vote thereon;

(4) The number of shares voted for and against such reduction, respectively;

(5) A statement of the manner in which such reduction is effected, and a statement expressed in dollars of the amount of stated capital of the corporation after giving effect to such reduction.

(c) When the statement is filed in accordance with § 4-26-1201, the stated capital of the corporation shall be reduced as therein set forth.

(d) No reduction of stated capital shall be made under the provisions of this section which would reduce the amount of the aggregate stated capital of the corporation to an amount equal to or less than the aggregate preferential amounts payable upon all issued shares having a preferential right in the assets of the corporation in the event of involuntary liquidation, plus the aggregate par value of all issued shares having a par value but no preferential right in the assets of the corporation in the event of involuntary liquidation; and in no event shall the stated capital be reduced to a sum less than three hundred dollars (\$300).

History. Acts 1965, No. 576, § 69;
A.S.A. 1947, § 64-604.

4-26-616. Surplus, net profits, and valuation of assets.

(a)(1) "Earned surplus" or "retained earnings" means the portion of the surplus of a corporation equal to the balance of its net profits, income, gains, and losses from the date of incorporation or from the latest date when a deficit was eliminated by an application of its capital surplus or otherwise, after deducting subsequent distributions to shareholders and transfers to stated capital and capital surplus to the extent the distributions and transfers are made out of earned surplus.

(2) The portion of earned surplus represented by gains derived from an exchange of assets shall be restricted and not available for dividends until these gains are realized in cash or unless the assets received are currently realizable in cash.

(3) The proceeds of insurance upon the life of a shareholder or officer, when collected by the corporation as beneficiary, and where the premiums on the insurance policy have been paid by the corporation, shall be classified as earned surplus.

(4) Earned surplus shall include also any portion of surplus allocated to earned surplus in mergers, consolidations, or acquisitions of all or substantially all of the outstanding shares or of the property and assets of another corporation, domestic or foreign.

(b)(1) "Capital surplus" means the entire surplus of the corporation other than its earned surplus and includes paid-in surplus; surplus, hereinafter called "reduction surplus", arising from reduction of stated capital; and surplus, hereinafter called "revaluation surplus", arising from a revaluation of assets made in good faith upon demonstrably adequate bases of revaluation.

(2) Capital surplus shall be determined in accordance with generally accepted accounting principles and classified according to its derivation on the books, balance sheets, and statements of the corporation.

(c)(1) Surplus created by the cancellation of treasury shares in connection with a stated capital reduction or by the purchase and cancellation of redeemable shares shall be capital surplus.

(2) When a corporation has applied its earned surplus to the acquisition of treasury shares and these shares are subsequently disposed of for a consideration, the corporation may, at its option, restore to earned surplus, out of the consideration received and on a pro rata basis per share, all or part of the amount by which earned surplus was reduced at the time of acquisition of such shares. If the consideration received exceeds the amount by which earned surplus was reduced with respect to such shares, the excess shall be capital surplus.

(d) Subject to § 4-26-619(3), in computing earned surplus or net profits deduction shall be made for such obsolescence, depletion, depreciation losses, bad debts, and other items as accords with generally accepted accounting principles.

(e) The capital surplus of a corporation may be increased from time to time by resolution of the board of directors directing that all or a part

of the earned surplus of the corporation be transferred to capital surplus.

(f) A corporation may, by resolution of its board of directors, apply any part or all of its capital surplus, other than revaluation surplus not currently realizable in cash, to the reduction or elimination of any deficit arising from losses, however incurred, but only after first eliminating the earned surplus, if any, of the corporation by applying the losses against earned surplus and only to the extent that the losses exceed the earned surplus, if any. Each such application of capital surplus shall, to the extent thereof, effect a reduction of capital surplus.

(g) A corporation may, by resolution of its board of directors, create a reserve out of its earned surplus for any proper purpose and may abolish any such reserve in the same manner. Earned surplus of the corporation to the extent so reserved shall not be available for the payment of dividends or other distributions by the corporation except as expressly permitted by this chapter.

History. Acts 1965, No. 576, § 44;
A.S.A. 1947, § 64-401.

4-26-617. Dividends — General powers of board.

The board of directors may from time to time declare, and the corporation may pay, dividends on its outstanding shares, which dividends may be payable in cash or property or may be payable in the shares of the corporation. However, the declaration and payment of all dividends shall be subject to the provisions and restrictions contained in §§ 4-26-618 and 4-26-619.

History. Acts 1965, No. 576, § 45;
A.S.A. 1947, § 64-402.

CASE NOTES

Declaration.

A private corporation's surplus may be divided among its stockholders without a formal declaration of a dividend where no

creditors are injured. *Freeman v. Rogers White Lime Co.*, 138 Ark. 312, 211 S.W. 146 (1919) (decision under prior law).

4-26-618. Share dividends.

(a) Subject to the restrictions provided in this subsection, the board of directors of a corporation may declare and pay dividends in its own authorized but unissued shares out of any unreserved and unrestricted surplus other than revaluation surplus of the corporation upon the following conditions:

(1) If a dividend is payable in its own shares having a par value, those shares shall be issued at not less than the par value, and there shall be transferred to stated capital at the time the dividend is paid an amount of surplus at least equal to the aggregate par value of the shares to be issued as a dividend;

(2) If a dividend is payable in its own shares without par value, such shares shall be issued at not less than the stated value, which shall not be more than the fair value, as determined by resolution of the board of directors adopted at the time the dividend is declared, and there shall be transferred to stated capital at the time dividend is paid an amount of surplus equal to the aggregate stated value of the shares to be issued as a dividend;

(3) If the fair value of the shares included in the share dividend, as determined by resolution of the board of directors, exceeds the stated value thereof at the time the dividend is paid, the difference between the stated value and the fair value shall be accounted for in accordance with generally accepted accounting principles.

(b) When any share dividend is paid out of capital surplus, the shareholders receiving the dividend shall be concurrently notified of the source thereof.

(c) No dividend payable in shares of any class shall be paid to the holders of shares of any other class unless the articles of incorporation so provide or payment is authorized by the affirmative vote or the written consent of the holders of at least a majority of the outstanding shares of the class in which the payment is to be made.

(d)(1) Treasury shares that have been acquired by the corporation out of its surplus may, by authority of the board of directors, be ratably distributed among the shareholders.

(2) However, no distribution of the shares of one (1) class to the holders of shares of another class shall be made except under the conditions set out in subsection (c) of this section.

(3) Concurrently with the making of any such distribution, the corporation shall designate the transaction as a distribution of treasury shares and shall not represent it to be a share dividend.

(4) No transfer from surplus to stated capital is necessary in connection with a distribution of treasury shares.

(e) A split-up or division of the issued shares of any class into a greater number of shares of the same class without increasing the stated capital of the corporation shall not be construed to be a share dividend within the meaning of this section.

History. Acts 1965, No. 576, § 45;
A.S.A. 1947, § 64-402.

4-26-619. Dividends other than in shares of the corporation.

In respect to all dividends payable by a corporation other than dividends payable in its own shares:

(1) Subject to subdivisions (3) and (4) of this section, these dividends shall be payable only:

(A) Out of the unreserved and unrestricted earned surplus of the corporation; or

(B) Out of the capital surplus other than revaluation surplus of the corporation, but dividends from capital surplus may be paid only if

there is no unreserved and unrestricted earned surplus and then only to shares entitled to cumulative preferential dividends, and no capital surplus paid in by any class of stock may be used for the payment of dividends on any class junior thereto; or

(C) Out of the corporation's net profits for the fiscal year then current.

(2) No dividend may be declared or paid if there are reasonable grounds for believing that upon the payment:

(A) The liabilities of the corporation would exceed its assets; or

(B) The corporation would be unable to pay its obligations to creditors as they become due in the ordinary course of business; or

(C) The highest liquidation preferences of shares entitled to such preference over the shares receiving the dividend would exceed the corporation's net assets; or

(D) The payment of the dividend would be contrary to any provision of the articles of incorporation.

(3) Except to the extent prohibited by its articles of incorporation, a corporation engaged solely or substantially in the exploitation of mines, timber, oil wells, gas wells, patents, or other wasting assets, or organized solely or substantially for the liquidation of specific assets, may, for the purpose of determining its right to pay dividends, compute its earned surplus or net profits without deduction for the depletion of assets incidental to the exploitation or liquidation or lapse of time.

(4) Notwithstanding any provision of this chapter to the contrary, a corporation engaged primarily in the holding or sale of securities may, subject to the restriction contained in subdivision (2) of this section, pay to the holders of common or preferred stock a dividend from revaluation surplus represented by appreciation, readily ascertainable and realizable in cash, in the value of securities held by the corporation; but such dividend may be paid only after the board of directors shall have determined, with the determination to be included in the resolution authorizing the dividend, that the assets of the corporation remaining after the payment of such dividend have a fair value which is not less than one and one-fourth ($1\frac{1}{4}$) times the amount of its liabilities to creditors.

(5) In respect to each dividend payable to the holders of preferred stock out of capital surplus as permitted under subdivision (1)(B) of this section, or payable without deduction for depletion as permitted under subdivision (3) of this section, or payable out of unrealized appreciation as permitted in subdivision (4) of this section, concurrently with the payment of the dividend, the corporation shall disclose to each shareholder receiving a dividend the source from which the dividend is paid; and the source from which the dividend is paid shall also be shown on all notices, reports, and statements which contain a reference to such dividend.

(6) Notwithstanding any other provision of this chapter, in any situation where as much as ninety-five percent (95%) of the capital stock of a corporation is owned by one (1) or more other corporations,

the corporation whose stock is so owned may pay dividends out of its assets in excess of its liabilities to creditors regardless of the effect of such dividends upon the stated capital account, provided the assets remaining after such dividends shall have a value of at least one and one-fourth ($1\frac{1}{4}$) times the amount of such corporation's liability to its creditors and provided further such dividends will not impair such corporation's ability to pay its debts as they mature.

History. Acts 1965, No. 576, § 45;
A.S.A. 1947, § 64-402.

RESEARCH REFERENCES

UALR L.J. Survey—Corporations, 10
UALR L.J. 549.

4-26-620. Distributions in partial liquidation.

The board of directors of a corporation may from time to time distribute to its shareholders in partial liquidation out of capital surplus, other than a revaluation surplus, of the corporation a portion of its assets, in cash or property, subject to the following provisions:

(1) No distribution shall be made if there is a reasonable ground for believing that as a result thereof the corporation would be unable to meet its obligations as they become due in the ordinary course of business or that the fair value of the remaining assets of the corporation would be less than one and one-fourth ($1\frac{1}{4}$) times the amount of its liabilities to creditors.

(2) The distribution shall be made only upon a determination by the board of directors that the assets of the corporation are in excess of the needs of its business and upon authorization evidenced by resolution adopted by the holders of a majority of the shares of each class, whether or not otherwise entitled to vote.

(3) No distribution shall be made to the holders of any class of shares unless all cumulative dividends accrued on all preferred or special classes of shares entitled to preferential dividends shall have been fully paid.

(4) No distribution shall be made to the holders of any class of shares which would reduce the remaining net assets of the corporation below the aggregate preferential amount payable in event of voluntary liquidation to the holders of shares having preferential rights to the assets of the corporation in the event of liquidation.

(5) Each such distribution when made shall be identified as a distribution in partial liquidation and the amount per share disclosed to the shareholders receiving the same concurrently with the distribution thereof.

History. Acts 1965, No. 576, § 46;
A.S.A. 1947, § 64-403.

4-26-621. Contractual restriction on dividends.

Nothing in this chapter shall impair the right of a corporation to restrict, through a valid loan agreement, the payment of dividends or the making of distributions in partial liquidation.

History. Acts 1965, No. 576, § 47; A.S.A. 1947, § 64-404.

SUBCHAPTER 7 — SHAREHOLDERS

SECTION.

- 4-26-701. Shareholders' meetings generally.
- 4-26-702. Closing of transfer books and fixing record date.
- 4-26-703. Shareholders' meetings — Notice — Special meetings.
- 4-26-704. Shareholders' meetings — List of shareholders entitled to vote.
- 4-26-705. Shareholders' meetings — Quorum — Adjournment.
- 4-26-706. Voting trusts.
- 4-26-707. Class voting.
- 4-26-708. Voting of shares — Consent to corporate action.

SECTION.

- 4-26-709. Greater voting requirements.
- 4-26-710. Action by shareholders without a meeting.
- 4-26-711. Preemptive rights.
- 4-26-712. Shares without preemptive rights — Corporate powers and limitations.
- 4-26-713. Right to dissent no bar to other legal actions.
- 4-26-714. Shareholders' actions.
- 4-26-715. Books and records — Examination.
- 4-26-716. Liability of subscribers and shareholders.

Cross References. Stockholder, state not to be, Ark. Const., Art. 12, § 7.

Effective Dates. Acts 1965, No. 576, § 98: effective at midnight on Dec. 31, 1965.

Acts 1971, No. 345,* § 5: Mar. 22, 1971. Emergency clause provided: "It is hereby found and declared by the General Assembly that the existing laws with respect to stockholders voting in this state are caus-

ing undue hardship and imposing confusion upon the shareholders of corporations organized in this state. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public health, peace, safety and welfare, shall take effect and be in force from and after its passage and approval."

RESEARCH REFERENCES

ALR. Propriety of actions by attorney who has represented corporation acting for corporation in controversy with officer, director, or stockholder. 1 ALR 4th 1124.

Validity of variations from one share-one vote rule under modern corporate law. 3 ALR 4th 1204.

Stockholders' agreement allegedly infringing on directors' management power. 15 ALR 4th 1078.

Misrepresentation in proxy solicitation — state cases. 20 ALR 4th 1287.

Personal liability of stockholder, officer, or agent for debt of foreign corporation

doing business in the state. 27 ALR 4th 387.

Workers' compensation immunity as extending to one owning controlling interest in employer corporation. 30 ALR 4th 948.

Liability of independent accountant to investors or shareholders. 35 ALR 4th 225.

Professional corporation stockholders nonmalpractice liability. 50 ALR 4th 1276.

Liability of shareholders, director, and officers where corporate business is continued after its dissolution. 72 ALR 4th 419.

Validity of voting trust created by will. 77 ALR 4th 1194.

Validity, construction and effect of provision in charter or bylaws requiring supermajority vote. 80 ALR 4th 667.

Propriety of applying minority discount to value of shares purchased by corporation or its shareholders from minority shareholders. 13 ALR 5th 840.

Employee's control or ownership of corporation as precluding receipt of benefits

under state unemployment compensation provisions. 23 ALR 5th 176.

Independent accountant's liability to investors or shareholders. 48 ALR 5th 389.

Am. Jur. 18A Am. Jur. 2d, Corp., § 728 et seq.

Ark. L. Rev. Proxy and Insider-Trading Regulation: Federal-State Cooperation in the Protection of Investors, 19 Ark. L. Rev. 308.

C.J.S. 18 C.J.S., Corp., § 475 et seq.

4-26-701. Shareholders' meetings generally.

(a) Meetings of shareholders may be held at such place, either within or without this state, as may be provided in the bylaws. In the absence of any such provision, all meetings shall be held at the registered office of the corporation.

(b) An annual meeting of the shareholders shall be held at such time as may be provided in the bylaws. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation.

(c) Special meetings of the shareholders may be called by the president, the board of directors, the holders of not less than one-tenth ($\frac{1}{10}$) of all the shares entitled to vote at the meeting, or by such other officers or persons as may be given that power in the articles of incorporation or the bylaws.

History. Acts 1965, No. 576, § 30; A.S.A. 1947, § 64-214.

CASE NOTES

Call Bank Stock.

The owner of a majority of bank stock has the right to demand that a stockholders' meeting be held for the transaction of any business that may be properly

brought before it; although the meeting cannot be held at the time provided by the bylaws, such meeting should be held. *Rice v. Beavers*, 213 Ark. 656, 212 S.W.2d 30 (1948) (decision under prior law).

4-26-702. Closing of transfer books and fixing record date.

(a)(1) For the purpose of determining shareholders entitled to notice of or to vote at any meetings of shareholders or any adjournment thereof, or entitled to receive payment of any dividend, or in order to make a determination of shareholders for any proper purpose, the board of directors of a corporation may provide that the stock transfer books shall be closed for a stated period but not to exceed in any case sixty-five (65) days.

(2) If the stock transfer books shall be closed for the purpose of determining shareholders entitled to notice of or to vote at a meeting of

shareholders, the books shall be closed for at least ten (10) days immediately preceding such meeting.

(b) In lieu of closing the stock transfer books, the bylaws, or in the absence of an applicable bylaw, the board of directors, may fix in advance a date as the record date for any such determination of shareholders, the date in any case to be not more than sixty-five (65) days and, in case of a meeting of shareholders, not fewer than ten (10) days prior to the date on which the particular action, requiring such determination of shareholders, is to be taken.

(c) If the stock transfer books are not closed and no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders or shareholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the board of directors declaring the dividend is adopted, as the case may be, shall be the record date for the determination of shareholders.

(d) When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this section, the determination shall apply to any adjournment thereof.

History. Acts 1965, No. 576, § 32;
A.S.A. 1947, § 64-216.

4-26-703. Shareholders' meetings — Notice — Special meetings.

(a)(1) Written or printed notice stating the place, day, and hour of the meeting, and, in case of a special meeting, the purpose for which the meeting is called shall be delivered not less than sixty (60) nor more than seventy-five (75) days before the date of the meeting if a proposal to increase the authorized capital stock or bond indebtedness is to be submitted, and in all other cases not less than ten (10) nor more than fifty (50) days before the date of the meeting, either personally or by mail, by or at the direction of the president, the secretary, or any officer designated for that purpose in the bylaws or by the board of directors, or by the shareholder calling the meeting, to each shareholder of record entitled to vote at the meeting.

(2) If mailed, the notice shall be deemed to be delivered when deposited in the United States mail addressed to the shareholder at his address as it appears on the books of the corporation, with postage prepaid.

(b) If a proposal to increase authorized capital stock or bond indebtedness; or to dissolve or merge or consolidate; or to sell, lease, exchange, or otherwise dispose of all or substantially all of the corporate assets other than in the regular course of business; or to alter the capital structure; or to amend the articles of incorporation; or to effect any other fundamental change is to be submitted at an annual meeting of the shareholders, the annual meeting shall be deemed for that purpose a special meeting; and notice based upon a proper call shall be given accordingly.

History. Acts 1965, No. 576, § 31;
A.S.A. 1947, § 64-215.

CASE NOTES

Notice.

A stockholders' meeting, of which absent stockholders had no proper notice, was illegal, and action then taken was not

binding. *Red Bud Realty Co. v. South*, 96 Ark. 281, 131 S.W. 340 (1910) (decision under prior law).

4-26-704. Shareholders' meetings — List of shareholders entitled to vote.

(a)(1) The officer or agent having charge of the stock transfer books for shares of a corporation shall make, at least ten (10) days before each meeting of shareholders, a complete list of the shareholders entitled to vote at that meeting or any adjournment thereof, arranged in alphabetical order, with the address of and the number of shares held by each.

(2) This list, for a period of ten (10) days prior to such meeting, shall be kept on file at the registered office of the corporation or at its principal place of business in this state and shall be subject to inspection by any shareholder at any time during usual business hours.

(3) This list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting.

(4) The original stock transfer books shall be prima facie evidence as to who are the shareholders entitled to examine the list or transfer books or to vote at any meeting of shareholders.

(b) Failure to comply with the requirements of this section shall not affect the validity of any action taken at such meeting.

(c) An officer or agent having charge of the stock transfer books who shall fail to prepare the list of shareholders, or keep it on file for a period of ten (10) days, or produce and keep it open for inspection at the meeting, as provided in this section, shall be liable to any shareholder suffering damage on account of such failure to the extent of such damage.

History. Acts 1965, No. 576, § 33;
A.S.A. 1947, § 64-217.

CASE NOTES

Evidence.

Record of stock of bank corporation constituted the best evidence as to who were

stockholders in the bank. *Berlin v. Rainwater*, 174 Ark. 66, 294 S.W. 368 (1927) (decision under prior law).

4-26-705. Shareholders' meetings — Quorum — Adjournment.

(a)(1) Unless otherwise provided in the articles of incorporation, a majority of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders, but in no

event shall a quorum consist of less than one-third ($\frac{1}{3}$) of the shares entitled to vote at the meeting.

(2) If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the shareholders, unless the vote of a greater number or voting by classes is required by this chapter or the articles of incorporation or bylaws.

(b)(1)(A) In the absence of a quorum at the opening of any meeting of the shareholders, the meeting may be adjourned by the vote of a majority of the shares entitled to vote at the meeting which are represented at the meeting by the holders thereof in person or by proxy.

(B) Any adjourned meeting may be readjourned in like manner.

(2)(A) When any one (1) adjournment is for thirty (30) days or more, a fifteen-day notice of the adjourned meeting shall be given by mailing as provided in § 4-26-703.

(B) When any one (1) adjournment is for less than thirty (30) days, it is not necessary, unless the bylaws provide otherwise, to give notice of the time and place of the adjourned meeting or of the business to be transacted there other than by announcement at the meeting at which the adjournment is taken.

History. Acts 1965, No. 576, § 34;
A.S.A. 1947, § 64-218.

4-26-706. Voting trusts.

(a) Any number of shareholders of a corporation may create a voting trust for the purpose of conferring upon a trustee or trustees the right to vote or otherwise represent their shares, for a period of not to exceed ten (10) years, by entering into a written voting trust agreement specifying the terms and conditions of the voting trust, by depositing a counterpart of the agreement with the corporation at its registered office, and by transferring their shares to the trustee or trustees for the purposes of the agreement.

(b) The counterpart of the voting trust agreement so deposited with the corporation shall be subject to the same right of examination by a shareholder of the corporation, in person or by agent or attorney, as are the books and records of the corporation and shall be subject to examination by any holder of a beneficial interest in the voting trust, either in person or by agent or attorney, at any reasonable time for any proper purpose.

History. Acts 1965, No. 576, § 35.2;
A.S.A. 1947, § 64-221.

RESEARCH REFERENCES

Ark. L. Rev. Note, Hall v. Staha: Arkansas Courts Adopt the Business Judgment Rule as a Tool of Judicial Review

and Analyze the Issue of Excessive Executive Compensation, 47 Ark. L. Rev. 959.

CASE NOTES

ANALYSIS

Purpose.
Applicability.
Violation.

Purpose.

The legislative purpose of this section is to avoid secret control and unlawful purpose. Hall v. Staha, 303 Ark. 673, 800 S.W.2d 396 (1990).

The main purpose of a voting trust statute is to avoid secret, uncontrolled combinations of stockholders formed to acquire voting control of a corporation to the possible detriment of the nonparticipating stockholders. Hall v. Staha, 303 Ark. 673, 800 S.W.2d 396 (1990).

Applicability.

This section is not applicable to insurance corporations. Bailey v. Jones, 242

Ark. 668, 419 S.W.2d 585 (1967) (decision under prior law).

Characteristics of limited partnership, formed for the purpose of gaining control of a specific corporation by acquiring more than 50 percent of its stock, came within the definition of a "voting trust" as provided in this section. Hall v. Staha, 303 Ark. 673, 800 S.W.2d 396 (1990).

Violation.

Partnership whose characteristics came within the definition of "voting trust" violated subsection (a) in that its term was longer than ten years, and a copy of the fully executed written agreement, including names of the limited partners, was not filed with the corporation. Hall v. Staha, 303 Ark. 673, 800 S.W.2d 396 (1990).

4-26-707. Class voting.

(a) In each instance where, under § 4-26-302(a)(4), § 4-26-303, § 4-26-611(e), § 4-26-705(a)(2), § 4-26-903(a)(3)(B), § 4-26-1003(d), or § 4-26-1101, a provision is made for the class voting of stock, thus requiring the votes a certain percentage of each separate class of shares to authorize some specific corporate action, each class of shares to which such requirement of class voting is applicable shall be bound by the votes which are cast in person or by proxy of at least two-thirds ($\frac{2}{3}$) of those members of such class who are present in person or represented at the meeting by proxy if due and timely notice of the meeting has been given to all members of said class and at least fifty percent (50%) of the shares embraced in the class are present in person or by proxy.

(b) The certificate to articles of amendment (§ 4-26-304), articles of merger or consolidation (§ 4-26-1004), and articles of dissolution (§ 4-26-1102) shall, in all situations to which this section applies, be amended and adjusted to show the manner in which the requirements of this section were met in respect to class voting.

(c) This section shall apply only to corporations having five hundred (500) or more shareholders.

History. Acts 1971, No. 345, §§ 1-3; A.S.A. 1947, §§ 64-225 — 64-227.

4-26-708. Voting of shares — Consent to corporate action.

(a) Each outstanding share, regardless of class, shall be entitled to one (1) vote on each matter submitted to a vote at a meeting of the shareholders, except to the extent that the voting rights of the shares of any class are limited or denied by the articles of incorporation as permitted by this chapter.

(b) Neither treasury shares nor shares of its own stock held by a corporation in a fiduciary capacity nor shares held by another corporation, if a majority of the shares entitled to vote for the election of directors of such other corporation is held by the corporation, shall be voted at any meeting or counted in determining the total number of outstanding shares at any given time.

(c) A shareholder may vote either in person or by proxy executed in writing by the shareholder or by his duly authorized attorney-in-fact. No proxy shall be valid after eleven (11) months from the date of its execution unless otherwise provided in the proxy. A proxy is not revoked by the death or incapacity of the maker unless, before the vote is counted or the authority is exercised, written notice of the death or incapacity is given to the corporation.

(d) At each election for directors every shareholder entitled to vote at the election shall have the right to vote, in person or by proxy, the number of shares owned by him for as many persons as there are directors to be elected and for whose election he has a right to vote, or to cumulate his votes by giving one (1) candidate as many votes as the number of such directors multiplied by the number of his shares shall equal, or by distributing the votes on the same principle among any number of such candidates.

(e) Shares standing in the name of another corporation, domestic or foreign, may be voted by the president or a vice president of the other corporation or by such other officer, agent, or proxy as the bylaws of the other corporation may prescribe or as the board of directors of the other corporation may determine.

(f)(1) Unless the bylaws provide to the contrary, shares held by an administrator, executor, guardian, or curator may be voted by him without a transfer of such shares on the books of the corporation into his name.

(2) No trustee shall be entitled to vote shares held by him without a transfer of the shares on the books of the corporation into his name as trustee.

(g) Shares standing in the name of a receiver may be voted by the receiver, and shares held by or under the control of a receiver may be voted by the receiver without the transfer thereof on the books of the corporation into his name as receiver if authority to do so is contained in an appropriate order of the court by which such receiver was appointed.

(h) A shareholder whose shares are pledged shall be entitled to vote the shares until the shares have been transferred on the books of the

corporation into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

(i) Except to the extent that the same may be prohibited by the terms of a controlling will or inter vivos trust instrument, and also, in the case of foreign fiduciaries, by the applicable laws of the foreign jurisdiction, trustees, whether they are under testamentary or inter vivos trusts, executors, administrators, guardians, and curators, shall have the following proxy and voting privileges in respect to the fiduciary shares:

(1) Each such fiduciary may vote in person or by his general or limited proxy; and in the case of joint fiduciaries, each of them may execute a separate proxy, or all or any two (2) or more of them may unite in a joint proxy;

(2) Concerning joint fiduciaries:

(A) If one (1) only of the joint fiduciaries is present or represented at the meeting, his vote cast in person or by his proxy binds all;

(B) If more than one (1) is present or represented by proxy at the meeting, whether the number present or represented be all or less than the total number of the joint fiduciaries, the vote, in person or by proxy, of a majority of those present or represented binds all of the joint fiduciaries;

(C) In the situation mentioned in subdivision (i)(2)(B), if those present or represented are evenly opposed as to the method of voting the fiduciary shares, each fiduciary so present or represented acting in person or by proxy may vote a number of the fiduciary shares determined by dividing the total number by the number of joint fiduciaries present or represented at the meeting.

(j) The voting and proxy rights of a custodian under the Arkansas Uniform Gifts to Minors Act, Acts 1967, No. 250 [repealed] shall be controlled by the provisions of that act.

(k) In respect to shares held by tenants in common, joint tenants, or tenants by the entirety:

(1) If less than the entire number of cotenants be present at the meeting, in person or by proxy, the cotenant thus attending or represented at the meeting, provided they act unanimously if more than one (1), may vote in person or by proxy all shares held in cotenancy.

(2) If the votes of all cotenants present at the meeting in person or by proxy, whether they are all of the cotenants or less than all, are not cast unanimously, each cotenant present or his proxy shall vote a number of votes determined by dividing the number of shares held in cotenancy by the number of cotenants unless in the case of a tenancy in common, written evidence is produced which shows that the shares are owned in different proportions.

(l) The right of every shareholder, whether a sole owner, cotenant, fiduciary, or cofiduciary, to consent to corporate action shall be coextensive with his right to vote.

(m) On and after the date on which written notice of redemption of redeemable shares has been mailed to the holders and a sum sufficient to redeem such shares has been deposited with a bank or trust company

with irrevocable instructions and authority to pay the redemption price to the holders upon surrender of certificates therefor, the shares shall not be entitled to vote on any matter and shall not be deemed to be outstanding shares.

History. Acts 1965, No. 576, § 35;
A.S.A. 1947, § 64-219.

RESEARCH REFERENCES

UALR L.J. Survey—Corporations, 10
UALR L.J. 549.

4-26-709. Greater voting requirements.

Whenever, with respect to any action to be taken by the shareholders of a corporation, the articles of incorporation require the vote or concurrence of the holders of a greater proportion of the shares, or of any class or series thereof, than required by this chapter with respect to such action, the provisions of the articles of incorporation shall control.

History. Acts 1965, No. 576, § 35.3;
A.S.A. 1947, § 64-222.

4-26-710. Action by shareholders without a meeting.

(a) Any action required by this chapter to be taken at a meeting of the shareholders of a corporation or any action which may be taken at a meeting of the shareholders may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the shareholders entitled to vote with respect to the subject matter thereof. .

(b) The consent shall have the same force and effect as a unanimous vote of shareholders and may be stated as such in any articles or document filed with the Secretary of State under this chapter.

History. Acts 1965, No. 576, § 35.1;
A.S.A. 1947, § 64-220.

CASE NOTES

Consent.

Where husband and wife owned majority of the stock in a corporation operating a taxicab company, and acted as president and secretary, a lease with option to buy of the assets of the taxicab company executed by the husband and wife as officers of the corporation was valid, even though

minority stockholders received no notice of the meeting, as written consent by statutorily required percentage of the stockholders of a corporation makes sale valid. *Dixie Cab Co. v. Black & White Cab Co.*, 214 Ark. 624, 217 S.W.2d 602 (1949) (decision under prior law).

4-26-711. Preemptive rights.

(a) The term “preemptive rights”, as used in this chapter, shall refer to the right, exercisable under the circumstances hereinafter set out, to purchase the shares or securities of a corporation.

(b) The term “voting rights”, as used in this section, shall mean the right, not dependent on the happening of an event specified in the articles of incorporation which would affect the voting rights of any class of stock, to vote for the election of one (1) or more directors.

(c)(1) Unless otherwise provided in the articles of incorporation, the holders of the shares of any class, other than shares which are limited as to dividends and liquidation rights, in this section referred to as “such holders,” shall have the right, during a reasonable time and on reasonable terms to be fixed by the directors, to purchase the shares or securities so offered in proportion to their then-respective holdings at a lawful price substantially no less favorable than the price at which such shares or securities are to be offered to others; upon the offering for sale for cash of:

(A) Any shares that are either treasury shares or shares authorized to be issued of the same class as those held by such holders; or

(B) Any shares that are either treasury shares or shares authorized to be issued, whether or not of the same class as those held by such holders, having voting rights or dividend rights which would adversely affect the voting rights or dividend rights of such holders; or

(C) Any shares that are either treasury shares or shares authorized to be issued, notes, debentures, bonds, or other securities convertible into, or carrying options or warrants to purchase, shares coming within the description set out in subdivision (c)(1)(A) or (B) of this section.

(2) However, unless otherwise provided in the articles of incorporation, there shall be no preemptive right to purchase:

(A) Shares or other securities which are part of the shares or securities of the corporation authorized in the original articles of incorporation and are issued, sold, or optioned within two (2) years from the date of filing of the articles of incorporation; or

(B) Shares or other securities to be issued for considerations other than money; or

(C) Shares issued or to be issued to satisfy conversion rights or option rights theretofore lawfully granted by the corporation.

(d)(1) The board of directors shall cause to be mailed by first class mail, which need not be registered or certified, to each shareholder of record entitled to purchase shares or securities in accordance with this section, a notice directed to him at his address as shown on the books of the corporation, setting forth the time within which and the terms and conditions under which the shareholder may purchase the shares or securities and also the apportionment made of the right to purchase among the shareholders entitled to preemptive rights.

(2) The notice shall be mailed at least ten (10) days, or such longer period as may be prescribed by the board, prior to the expiration of the period during which the shareholder shall have the right to purchase.

(3) All shareholders entitled to preemptive rights to whom notice shall have been mailed as aforesaid shall be deemed conclusively to have been given a reasonable time in which to exercise their preemptive rights; and upon the expiration of the time specified in the notice, the preemptive rights if not exercised shall expire.

(e) Shares or securities subject to preemptive rights may be released from the preemptive rights on the vote or written consent of the holders of two-thirds ($\frac{2}{3}$) of the shares to which such rights attach. However, if shares or securities so released are not sold in one (1) year from the date of the release, the preemptive rights shall be reinstated.

History. Acts 1965, No. 576, § 27;
A.S.A. 1947, § 64-212.

4-26-712. Shares without preemptive rights — Corporate powers and limitations.

(a) In respect to shares or securities which are not subject to or which have been released from preemptive rights, or in respect to which preemptive rights have expired, and subject to subsection (b):

(1) The board of directors may grant options to subscribe for, or to purchase, such shares or securities; and it may fix the terms and consideration of such optional rights and of the purchase to be made thereunder. The optional rights may be evidenced in such form as the board may prescribe and may be made transferable.

(2) The board of directors, without the granting of options, may authorize the sale and issuance of the shares or securities; and the board may select the purchasers and fix the terms and consideration for the sale and issuance of the shares and securities.

(b)(1) A corporation shall not issue or sell to any one (1) or more of its directors, officers, or employees or to any one (1) or more of the directors, officers, or employees of a subsidiary corporation any of its treasury or authorized shares which carry voting rights, as defined in § 4-26-711(b), or options to purchase shares, or securities convertible into or carrying options to purchase shares, unless such action, including the terms and consideration of the proposed issuance and sale, shall first be approved by the vote or written consent of the holders of at least a majority of the shares of the corporation which carry such voting rights.

(2) However, no corporation which is required by the laws of the United States to register with and file periodic reports with the United States Securities and Exchange Commission shall be subject to the provisions of this subsection.

History. Acts 1965, No. 576, § 28;
1973, No. 110, § 1; A.S.A. 1947, § 64-213.

4-26-713. Right to dissent no bar to other legal actions.

The fact that a shareholder may have, under this chapter, a potential right of dissent and appraisal in respect to any corporate action will not impair his right to challenge the legality of the corporate action and sue to enjoin the action or enforce any other legal remedy in connection therewith, provided the shareholder is guilty of no laches and acts with great promptitude before the rights of third parties have intervened.

History. Acts 1965, No. 576, § 82;
A.S.A. 1947, § 64-224.

4-26-714. Shareholders' actions.

(a) No action shall be brought in this state by a shareholder in the right of a domestic corporation unless the plaintiff was a holder of shares or of voting trust certificates at the time of the transaction of which he complains, or his shares or voting trust certificates thereafter devolved upon him by operation of law from a person who was a holder at that time.

(b) In any action hereafter instituted in the right of any domestic corporation by the holder of shares of the corporation or of voting trust certificates therefor, the court having jurisdiction, upon final judgment and a finding that the action was brought without reasonable cause, may require the plaintiff to pay to the parties named as defendant the reasonable expenses, including fees of attorneys, incurred by them in the defense of such action.

(c)(1) In any action instituted in the right of a domestic corporation by the holders of less than five percent (5%) of the outstanding shares of any class of the corporation or of voting trust certificates therefor, unless the shares or voting trust certificates so held have a market value in excess of twenty-five thousand dollars (\$25,000), the corporation in whose right the action is brought or any defendant may move the court for an order, upon notice and hearing, requiring plaintiff to furnish security as provided in this section.

(2) The motion may be based upon one (1) or more of the following grounds:

(A) That there is no reasonable possibility that the prosecution of the cause of action alleged in the complaint against the moving party will benefit the corporation or its security holders.

(B) That the moving party, if other than the corporation, did not participate in the transaction complained of in any capacity.

(3) At the hearing upon the motion, the court shall consider such evidence, written or oral, by witnesses or affidavit, as may be material to the grounds upon which the motion is based, or to a determination of the probable reasonable expenses, including attorneys' fees, of the corporation and the moving party which will be incurred in the defense of the action.

(4) If the court determines, after hearing the evidence adduced by the parties at the hearing, that the moving party has established a

probability in support of any of the grounds upon which the motion is based, the court shall fix the nature and amount of security to be furnished by the plaintiff for reasonable expenses, including attorneys' fees, which may be incurred by the moving party and the corporation in connection with such action, including, but without limiting, the foregoing expenses for which the corporation may become liable pursuant to § 4-26-814.

(5) A determination by the court that security either shall or shall not be furnished or shall be furnished as to one (1) or more defendants and not as to others shall not be deemed a determination of any one (1) or more issues in the action or of the merits thereof.

(6) The corporation and the moving party may have recourse to the security in such amount as the court shall determine upon the termination of the action.

(7) The amount of security may from time to time be increased or decreased in the discretion of the court upon showing that the security provided has or may become inadequate or is excessive.

(8) If the court makes a determination that security shall be furnished by the plaintiff for the benefit of any one (1) or more defendants, the action shall be dismissed as to such defendant unless the security required by the court shall have been furnished within such reasonable time as may be fixed by the court.

(9) If any such motion is filed, no pleadings need be filed by the corporation or any other defendant, and the prosecution of the action shall be stayed until ten (10) days after the motion shall have been disposed of.

(d) A suit filed by a shareholder in the right of a domestic corporation may not be dismissed or compromised without the approval of the court.

History. Acts 1965, No. 576, § 49; A.S.A. 1947, § 64-223.

Publisher's Notes. The Supreme Court of Arkansas stated in a Per Curiam

of Nov. 24, 1986, that subsection (d) of this section was deemed superseded by the Arkansas Rules of Civil Procedure.

RESEARCH REFERENCES

Ark. L. Rev. A Look at the Derivative Suit, 24 Ark. L. Rev. 89.

Matthews, The Shareholder Derivative Suit in Arkansas, 52 Ark. L. Rev. 353.

UALR L.J. Webber, Arkansas Corporate Fiduciary Standards — Interested Directors' Contracts and the Doctrine of Corporate Opportunity, 5 UALR L.J. 39.

CASE NOTES

Actions Against Directors.

Courts will not ordinarily interfere at suit of a minority shareholder to control discretion of directors in management of affairs of corporation. *Red Bud Realty Co. v. South*, 96 Ark. 281, 131 S.W. 340 (1910) (decision under prior law).

Action in equity by stockholders of corporation against directors, for misconduct, must be brought within time in which corporation itself should have brought the suit. *Magale v. Fomby*, 132 Ark. 289, 201 S.W. 278 (1918) (decision under prior law).

Equity has jurisdiction in an action in-

volving negligence of directors in discharge of their duties to afford redress to the corporation and in proper cases to its shareholders. *Magale v. Fomby*, 132 Ark. 289, 201 S.W. 278 (1918) (decision under prior law).

Cited: *Taylor v. Terry*, 279 Ark. 97, 649 S.W.2d 392 (1983); *Robertson v. White*, 633 F. Supp. 954 (W.D. Ark. 1986); *Benton Window & Door, Little Rock Div., Inc. v. Garrett*, 290 Ark. 244, 718 S.W.2d 438 (1986).

4-26-715. Books and records — Examination.

(a) Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its shareholders and board of directors and shall keep at its registered office or principal place of business in this state, or at the office of its transfer agent or registrar in this state, a record of its shareholders, giving the names and addresses of all shareholders and the number and class of the shares held by each.

(b) Any person who shall have been a shareholder of record for at least six (6) months immediately preceding his demand, upon written demand stating the purpose thereof, shall have the right to examine, in person or by agent or attorney, at any reasonable time, for any proper purpose, its books and records of account, minutes, and record of shareholders and to make extracts therefrom.

(c)(1) Upon refusal by the corporation or by an officer or agent of the corporation to permit an inspection of the corporation's books, records of account, minutes, or record of shareholders, the person making demand for inspection may file a civil action in the circuit court of the county in which the corporation maintains either its principal place of business or its registered office for the purpose of securing an order of the court directing the corporation, its officers, and agents to permit the requested inspection.

(2) The proceeding shall be advanced upon the docket of the court; and the court shall hear the parties summarily, by affidavit or otherwise.

(3) If the applicant establishes that he is qualified and entitled to the inspection, the court shall grant an order permitting the inspection, subject to any limitations which the court may prescribe; and the court may grant such other relief as to the court may seem just and proper.

(4) The court may deny or restrict inspection if it finds that the shareholder has improperly used information secured through any prior examination of the books and records of accounts or minutes or record of shareholders of the corporation or of any other corporation, or that he was not acting in good faith or for a proper purpose in making his demand.

(d) Upon the written request of any shareholder of a corporation, the corporation shall mail to the shareholder its most recent financial statements showing in reasonable detail its assets and liabilities and the results of its operations.

History. Acts 1965, No. 576, § 53; A.S.A. 1947, § 64-312.

CASE NOTES

ANALYSIS

Evidence.
Minutes.

Evidence.

Entries upon books of corporation are prima facie evidence against it as admissions, and become conclusive evidence against it when the entries have been duly made by the recording officer. *City Elec. S. Ry. v. First Nat'l Exch. Bank*, 62 Ark. 33, 34 S.W. 89 (1896) (decision under prior law).

Record of stock of corporation constituted the best evidence as to who were stockholders. *Berlin v. Rainwater*, 174 Ark. 66, 294 S.W. 368 (1927) (decision under prior law).

The minute book of a corporation when identified, is competent evidence as to recitals therein and even though un-

signed, the minutes may be used to prove what took place at the meeting and that a resolution was passed thereat. *Grand Nat'l Bank v. Taylor*, 176 Ark. 1, 1 S.W.2d 818 (1928) (decision under prior law).

Where the proposed minutes of the board of directors' meeting were not in the corporation record book, the plaintiff failed to carry its burden of proof as to the genuineness of the action of the board in providing apparent authority of its agent. *National Sur. Corp. v. Crystal Springs Fishing Village, Inc.*, 326 F. Supp. 1171 (W.D. Ark. 1971).

Minutes.

Where meeting was legal meeting, authority conferred thereby would not be impaired because proper minutes thereof were not written up. *Engles v. Shaffer*, 143 Ark. 31, 219 S.W. 343 (1920) (decision under prior law).

4-26-716. Liability of subscribers and shareholders.

(a) A holder of or subscriber to shares of a corporation shall be under no obligation to the corporation or its creditors with respect to the shares other than the obligation to pay to the corporation the full consideration fixed as provided by law for which those shares were issued or to be issued.

(b)(1) Every original holder of watered shares or of shares not fully paid as agreed shall continue liable thereon to the corporation notwithstanding any transfer of the shares.

(2) A transferee of the shares shall not be liable thereon if he acquired them in good faith without knowledge or notice that they were watered shares or shares not fully paid as agreed or if he acquired them from a transferor similarly free from liability. The burden of proof that the transferee did not so acquire the shares shall be upon the adverse party.

(c) An executor, administrator, conservator, guardian, trustee, assignee for the benefit of creditors, or receiver shall not be personally liable to the corporation as a holder of or subscriber to shares of a corporation, but the estate and funds in his hands shall be so liable.

(d) No pledgee or other holder of shares as collateral security shall be personally liable as a shareholder.

History. Acts 1965, No. 576, § 25;
A.S.A. 1947, § 64-210.

RESEARCH REFERENCES

Ark. L. Rev. Note, Professional Corporations: Shareholder Liability and the Saving Clause, 42 Ark. L. Rev. 777.

CASE NOTES

ANALYSIS

Extent of liability.
Partial payment.

Extent of Liability.

Subscribers held not liable as partners in business, when they signed no articles of association, incorporation, or partnership and where they did not know that anyone was attempting to run the business as a partnership. *Rainwater v. Childress*, 121 Ark. 541, 182 S.W. 280 (1915) (decision under prior law).

A transferee of stock from the original subscriber who takes with notice that the stock is not fully paid up is liable to creditors of the corporation to the extent of the unpaid amount. *Davis v. Scott*, 129 Ark. 226, 195 S.W. 383 (1917) (decision under prior law).

The purchaser of stock in a de facto corporation is not liable as a partner to one who dealt solely with a corporation as a corporation. *Wesco Supply Co. v. Smith*, 134 Ark. 23, 203 S.W. 6 (1918) (decision under prior law).

Subscribers required to share liability in proportion to the amount of subscription to the capital stock. *Rhodes v. Carter*, 181 Ark. 370, 26 S.W.2d 63 (1930) (decision under prior law).

A stockholder is liable only for the proportion of his unpaid subscription necessary to pay the debts of the corporation when its property is insufficient for the purpose. *Wilson v. Lucas*, 185 Ark. 183, 47 S.W.2d 8 (1932) (decision under prior law).

Stockholders held liable as joint trespassers with company. *McGraw v. Berry*, 170 Ark. 426, 280 S.W. 383 (1926) (decision under prior law).

Partial Payment.

Where directors issued paid-up stock upon payment of 50 percent thereof, the stockholders would be liable for the full amount of their stock subscriptions, notwithstanding the illegal credit. *Wait v. McKee*, 95 Ark. 124, 128 S.W. 1028 (1910) (decision under prior law).

SUBCHAPTER 8 — DIRECTORS AND OFFICERS

SECTION.

- 4-26-801. Board of directors generally.
- 4-26-802. Number, election, and term of directors.
- 4-26-803. Vacancies.
- 4-26-804. Removal of directors.
- 4-26-805. Directors' meetings.
- 4-26-806. Quorum of directors.
- 4-26-807. Action of board with or without meeting.
- 4-26-808. Executive committee.

SECTION.

- 4-26-809. Bylaws.
- 4-26-810. Emergency bylaws — Operations during emergency.
- 4-26-811. Liability of directors.
- 4-26-812. Officers.
- 4-26-813. Removal of officers.
- 4-26-814. Indemnification of officers, directors, employees, and agents.

Effective Dates. Acts 1965, No. 576, § 98: effective at midnight on Dec. 31, 1965.

Acts 1973, No. 8, § 2: Jan. 26, 1973. Emergency clause provided: "It is hereby found and determined by the General As-

sembly that many corporations in the State of Arkansas are not now in compliance with the Corporation Code of the State of Arkansas due to the effect of Section 1 of Act 362 of 1971, and that the resulting confusion requires immediate

correction; therefore, an emergency is declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall take effect and be in force from the date of its approval."

Acts 1973, No. 94, § 5: Feb. 12, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that the provisions of Section 50 of Act 576 of 1965 relating to indemnification of corporate directors and officers are duly restrictive, a deterrent to the inducement of qualified persons to hold such positions, a deterrent to the incorporation of national corporations in Arkansas, and that it is immediately necessary to correct this undesirable situation. Therefore an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in effect from the date of its passage and approval."

Acts 1977, No. 317, § 3: Mar. 1, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present laws governing corporations in which only one shareholder holds all the voting stock are in

need of clarification with respect to the number of offices to be held by such person, and that the immediate passage of this Act is necessary to clarify the existing corporation laws in this respect. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 323, § 6: Mar. 19, 1987. Emergency clause provided: "It is found and declared that the authority of an executive committee of a business corporation to designate and price a series of shares of preferred or special classes of stock is a matter of uncertainty which requires immediate clarification. This Act is immediately necessary in order to facilitate such corporate action by an executive committee within limits prescribed by the board of directors. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

ALR. Propriety of actions by attorney who has represented corporation acting for corporation in controversy with officer, director, or stockholder. 1 ALR 4th 1124.

Stockholders' agreement allegedly infringing on directors' management powers. 15 ALR 4th 1078.

Purchase of shares of corporation by director or officer as usurpation of "corporate opportunity." 16 ALR 4th 784.

Fairness to corporation where "corporate opportunity" is allegedly usurped by officer or director. 17 ALR 4th 479.

Action against former director, officer, or stockholder in dissolved corporation for personal injuries incurred after final dissolution. 20 ALR 4th 414.

Duty of corporate directors to exercise "informed" judgment in recommending responses to merger or tender offers. 46 ALR 4th 887.

Liability of corporate director, officer, or employee for tortious interference with corporation's contract with another. 72 ALR 4th 492.

Negligence, liability of corporate custodian for negligence in dealing with affairs or assets of corporation. 74 ALR 4th 770.

Propriety and effect of corporation's appearance pro se through agent who is not attorney. 8 ALR 5th 653.

In-house counsel's right to maintain action for wrongful discharge. 16 ALR 5th 239.

Validity, construction, and effect of "regulatory exclusion" in directors' and officers' liability insurance policy. 21 ALR 5th 292.

What corporate communications are entitled to attorney-client privilege — modern cases. 27 ALR 5th 76.

Am. Jur. 18B Am. Jur. 2d, Corp., § 1341 et seq.

Ark. L. Rev. Tuohey, Corporate Director Resignation, 33 Ark. L. Rev. 106.

C.J.S. 19 C.J.S., Corp., § 715 et seq.

UALR L.J. Webber, Arkansas Corporate Fiduciary Standards — Interested Directors' Contracts and the Doctrine of Corporate Opportunity, 5 UALR L.J. 39.

CASE NOTES

Cited: *Marcum v. Wengert*, 344 Ark. 153, 40 S.W.3d 230 (2001).

4-26-801. Board of directors generally.

(a) All corporate powers shall be exercised by or under the authority of, and the business and affairs of a corporation shall be managed under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation.

(b) Directors need not be residents of this state or shareholders of the corporation unless the articles of incorporation or bylaws so require. The articles of incorporation or bylaws may prescribe other qualifications for directors.

(c) The board of directors shall have authority to fix the compensation of directors unless otherwise provided in the articles of incorporation.

(d) Directors may not vote by proxy.

History. Acts 1965, No. 576, § 36; A.S.A. 1947, § 64-301; Acts 1987, No. 323, § 2.

RESEARCH REFERENCES

Ark. L. Rev. Note, *Hall v. Staha: Arkansas Courts Adopt the Business Judgment Rule as a Tool of Judicial Review and Analyze the Issue of Excessive Executive Compensation*, 47 Ark. L. Rev. 959.

UALR L.J. Survey—Corporations, 10 UALR L.J. 549.

CASE NOTES

Compensation.

Directors may earn and be paid money by the corporation for services rendered. *Corning Custom Gin Co. v. Oliver*, 171 Ark. 175, 283 S.W. 977 (1926); *Oil Fields*

Corp. v. Hess, 186 Ark. 241, 53 S.W.2d 444 (1932) (preceding decisions under prior law).

Cited: *Smith v. Paul*, 317 Ark. 182, 876 S.W.2d 266 (1994).

4-26-802. Number, election, and term of directors.

(a) The number of directors of a corporation shall be not less than three (3) except that in cases where all the shares of a corporation are owned of record by either one (1) or two (2) shareholders, the number of directors may be one (1) or two (2) but not less than the number of shareholders. Subject to this limitation, the number of directors shall be fixed by the bylaws except as to the number constituting the initial board of directors, which number shall be fixed by the articles of incorporation.

(b) The number of directors may be increased or decreased from time to time by amendment to the bylaws, but no decrease shall have the effect of shortening the term of any incumbent director.

(c) In the absence of a bylaw fixing the number of directors, the number shall be the same as the number stated in the articles of incorporation.

(d) The number of directors who will constitute the initial board shall be stated in the articles of incorporation; and the members of the first board shall hold office until the first annual meeting of shareholders and until their successors shall have been elected and qualified.

(e) At the first annual meeting of shareholders and at each annual meeting thereafter, the shareholders shall elect directors to hold office until the next succeeding annual meeting.

(f) Each director shall hold office for the term for which he is elected and until his successor shall have been elected and qualified.

History. Acts 1965, No. 576, § 37;
A.S.A. 1947, § 64-302.

4-26-803. Vacancies.

(a)(1) A vacancy on the board of directors shall exist when a director dies or resigns or when he is removed by the shareholders or by virtue of newly created directorship resulting from any increase in the authorized number of directors.

(2) Any vacancy, other than a vacancy occurring through shareholders' action in removing a director, occurring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the board, unless it is otherwise provided in the articles of incorporation or bylaws, and the directors so chosen shall hold office until the next annual election and until their successors are duly elected and qualified, unless sooner displaced.

(b) If by reason of death, resignation, or other cause, a corporation should at any time have no directors in office, then any shareholder or the executor or administrator of a deceased shareholder may call a special meeting of shareholders and, over his own signature, give notice of the meeting according to § 4-26-703.

History. Acts 1965, No. 576, § 38;
A.S.A. 1947, § 64-303.

4-26-804. Removal of directors.

(a)(1) At a shareholders' meeting called expressly for that purpose, directors may be removed in the manner provided in this section.

(2) The entire board of directors or any one (1) or more of the directors may be removed, with or without cause, by a vote of the holders of a majority of the shares then entitled to vote at an election of directors.

(3) If less than the entire board is to be removed, no one of the directors may be removed if the votes cast against his removal would be sufficient to elect him if then cumulatively voted at an election of the entire board of directors.

(b) Whenever the holders of the shares of any class are entitled to elect one (1) or more directors by the provisions of the articles of incorporation, the provisions of this section shall apply, in respect to the removal of a director or directors so elected, to the vote of the holders of the outstanding shares of that class and not to the vote of the outstanding shares as a whole.

(c) When a director shall be removed, the resulting vacancy shall be filled by the shareholders and may be filled at the same shareholders' meeting at which the vacancy is created or at a subsequent meeting.

History. Acts 1965, No. 576, § 39;
A.S.A. 1947, § 64-304.

4-26-805. Directors' meetings.

(a) Meetings of the board of directors, regular or special, may be held either within or without this state.

(b)(1) Regular meetings of the board of directors may be held with or without notice as prescribed in the bylaws.

(2) Special meetings of the board of directors shall be held upon such notice as is prescribed in the bylaws; but such notice may be waived as provided in § 4-26-105.

(3) Neither the business to be transacted at nor the purpose of any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of the meeting unless required by the bylaws.

History. Acts 1965, No. 576, § 42;
A.S.A. 1947, § 64-307.

CASE NOTES

Notice.

Corporation's by-laws requirement that at least three days' written notice of special board meetings be given to each mem-

ber follows the notice requirements found in this section. *Marine Servs. Unlimited, Inc. v. Rakes*, 323 Ark. 757, 918 S.W.2d 132 (1996).

4-26-806. Quorum of directors.

A majority of the number of directors fixed by the bylaws, or in the absence of a bylaw fixing the number of directors then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business unless a greater number is required by the articles of incorporation or the bylaws.

History. Acts 1965, No. 576, § 40;
A.S.A. 1947, § 64-305.

4-26-807. Action of board with or without meeting.

(a) The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors unless the act of a greater number is required by the articles of incorporation or the bylaws.

(b) Where the articles of incorporation or bylaws expressly permit such procedure, an action taken by a majority of the directors without a meeting in respect to any corporate matter is nevertheless a valid board action if either before or after the action is taken, all members of the board sign and file with the secretary for inclusion in the corporate minute book a memorandum showing the nature of the action taken, showing that each member of the board consented to the board acting informally in respect to the matter, and showing the names of the directors who approved the action taken and the names of those who opposed it.

History. Acts 1965, No. 576, § 40;
A.S.A. 1947, § 64-305.

RESEARCH REFERENCES

UALR L.J. Survey—Corporations, 10
UALR L.J. 549.

4-26-808. Executive committee.

(a) The articles of incorporation or bylaws may provide for the creation, by the board of directors from its membership, of an executive committee, to consist of not less than three (3) directors. To the extent specified by the board of directors or in the articles of incorporation or bylaws, the executive committee may exercise the authority of the board of directors under § 4-26-801. The executive committee may not, however:

- (1) Authorize distributions;
- (2) Approve or propose to shareholders any action that this chapter requires to be approved by shareholders;
- (3) Fill vacancies on the board of directors or on any of its committees;
- (4) Amend the articles of incorporation;
- (5) Adopt, amend, or repeal bylaws;
- (6) Approve a plan of merger not requiring shareholder approval;
- (7) Authorize or approve the reacquisition of shares, except according to a formula or method prescribed by the board of directors; or
- (8) Authorize or approve the issuance, sale, or contract for sale of shares or determine the designation and relative rights, preferences, and limitations of a class or series of shares. However, the board of directors may authorize a committee or a senior executive officer of the corporation to do so within the limits specifically prescribed by the board of directors.

(b) The executive committee shall serve at the pleasure of the board of directors and shall act only in the intervals between the meetings of the board of directors and shall be subject to the control and direction of the board.

(c) Unless otherwise provided in the articles of incorporation or bylaws, the executive committee may act by a majority of its members at a meeting or informally without a meeting provided all members sign a writing reflecting such informal action.

(d) An act or authorization of an act by the executive committee with the authority lawfully delegated to it shall be as effective for all purposes as the act or authorization of the directors; however, the designation of the committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any member thereof, of any responsibility imposed upon it or him by law.

History. Acts 1965, No. 576, § 41;
A.S.A. 1947, § 64-306; Acts 1987, No. 323,
§ 3.

RESEARCH REFERENCES

UALR L.J. Survey—Corporations, 10
UALR L.J. 549.

4-26-809. Bylaws.

(a)(1) The initial bylaws of a corporation shall be adopted by its board of directors.

(2) The power to alter, amend, or repeal the bylaws or adopt new bylaws shall be vested in the board of directors except to the extent such power is reserved to the shareholders by the articles of incorporation.

(3) The bylaws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with law or the articles of incorporation.

(b) The adoption, amendment, or repeal of a bylaw by the board of directors shall require the affirmative vote of a majority of the authorized membership of the board; and any such action taken by the shareholders under authority reserved in the articles shall require the affirmative vote of the holders of a majority of the shares having voting rights as defined in § 4-26-711(b) and also the affirmative vote of the holders of a majority of the shares of any other class which may be substantially adversely affected by such action.

History. Acts 1965, No. 576, § 29;
A.S.A. 1947, § 64-513.

4-26-810. Emergency bylaws — Operations during emergency.

(a) The board of directors of any corporation may adopt emergency bylaws, subject to repeal or change by action of the shareholders, which shall, notwithstanding any different provision elsewhere in this chapter

or in the articles of incorporation or bylaws, be operative during any emergency resulting from an attack on the United States or on a locality in which the corporation conducts its business or customarily holds meetings of its board of directors or its shareholders, or during any nuclear or atomic disaster, or during the existence of any catastrophe, or other similar emergency condition, as a result of which a quorum of the board of directors or a standing committee cannot readily be convened for action.

(b) The emergency bylaws may make any provision that may be practical and necessary for the circumstances of the emergency, including without limitation provisions that:

(1) A meeting of the board of directors or a committee may be called by any officer or director in such manner and under such conditions as shall be prescribed in the emergency bylaws;

(2) The director or directors in attendance at the meeting or any greater number fixed by the emergency bylaws shall constitute a quorum; and

(3) The officers or other persons designated on a list approved by the board of directors before the emergency, all in such order of priority and subject to such conditions and for such period of time not longer than reasonably necessary after the termination of the emergency as may be provided in the emergency bylaws or in the resolution approving the list, to the extent required to provide a quorum at any meeting of the board of directors, shall be deemed directors for that meeting.

(c) The board of directors, either before or during any emergency, may provide and from time to time modify lines of succession in the event that during the emergency any or all officers or agents of the corporation shall, for any reason, be rendered incapable of discharging their duties.

(d) The board of directors, either before or during any emergency, may, effective in the emergency, change the head office or designate several alternative head offices or regional offices, or authorize the officers to do so.

(e) No officer, director, or employee acting in accordance with any emergency bylaws shall be liable except for willful misconduct.

(f) To the extent not inconsistent with any emergency bylaws so adopted, the bylaws of the corporation shall remain in effect during any emergency, and upon its termination, the emergency bylaws shall cease to be operative.

(g) Unless otherwise provided in emergency bylaws, notice of any meeting of the board of directors during an emergency may be given only to such of the directors as it may be feasible to reach at the time and by such means as may be feasible at the time, including publications or radio.

(h) To the extent required to constitute a quorum at any meeting of the board of directors during such an emergency, the officers of the corporation who are present shall, unless otherwise provided in emergency bylaws, be deemed, in order of rank and within the same rank in order of seniority, directors for such meeting.

History. Acts 1965, No. 576, § 35.4;
A.S.A. 1947, § 64-514.

4-26-811. Liability of directors.

(a) In addition to any other liabilities imposed by law upon directors of a corporation:

(1) Directors of a corporation who vote for or assent to the declaration of any dividend or other distribution of the assets of a corporation to its shareholders contrary to the provisions of this chapter or contrary to any restrictions contained in the articles of incorporation shall be jointly and severally liable to the corporation for the amount of the dividend which is paid or the value of the assets which are distributed in excess of the amount of the dividend or distribution which could have been paid or distributed without a violation of the provisions of this chapter or the restrictions in the articles of incorporation;

(2) Directors of a corporation who vote for or assent to the purchase of its own shares contrary to the provisions of this chapter shall be jointly and severally liable to the corporation for the amount of consideration paid for the shares which is in excess of the maximum amount which could have been paid without a violation of the provisions of this chapter;

(3) The directors of a corporation who vote for or assent to any distribution of assets of a corporation to its shareholders during the liquidation of the corporation without the payment and discharge of, or making adequate provision for, all known debts, obligations, and liabilities of the corporation shall be jointly and severally liable to the corporation for the value of the assets which are distributed, to the extent that the debts, obligations, and liabilities of the corporation are not thereafter paid and discharged;

(4) The directors of a corporation who vote for or assent to the making of a loan secured by shares of the corporation shall be jointly and severally liable to the corporation for the amount of such loan until the repayment thereof;

(5) If a corporation commences business before it has received three hundred dollars (\$300) as consideration for the issuance of shares, the directors who assent thereto shall be jointly and severally liable to the corporation for such part of three hundred dollars (\$300) as shall not have been received before commencing business, but this liability shall be terminated when the corporation has actually received three hundred dollars (\$300) as consideration for the issuance of shares.

(b)(1) A director of a corporation who is present at a meeting of its board of directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent is entered in the minutes of the meeting or unless he files his written dissent to the action with the person acting as the secretary of the meeting before the adjournment thereof or forwards the dissent by registered or certified mail to the secretary of the corporation immediately after the adjournment of the meeting.

(2) The right to dissent shall not apply to a director who voted in favor of the action.

(c) A director shall not be liable under subdivision (a)(1), (2), or (3) if he relied and acted in good faith upon financial statements of the corporation represented to him to be correct by the president or the officer of the corporation having charge of its books of account, or stated in a written report by an independent public or certified public accountant or firm of such accountants fairly to reflect the financial condition of the corporation, nor shall he be so liable if in good faith in determining the amount available for any dividend or distribution he considered the assets to be of their book value.

(d) Any director against whom a claim shall be asserted under or pursuant to this section for the payment of a dividend or other distribution of assets of a corporation and who shall be held liable thereon shall be entitled to contribution from the shareholders who accepted or received any such dividend or assets, knowing the dividend or distribution to have been made in violation of this section, in proportion to the amounts received by them respectively.

(e) Any director against whom a claim shall be asserted under or pursuant to this section shall be entitled to contribution from the other directors who voted for or assented to the action upon which the claim is asserted.

History. Acts 1965, No. 576, § 48; A.S.A. 1947, § 64-308.

RESEARCH REFERENCES

Ark. L. Rev. Note, Professional Corporations: Shareholder Liability and the Saving Clause, 42 Ark. L. Rev. 777.

UALR L.J. Survey—Corporations, 10 UALR L.J. 549.

CASE NOTES

ANALYSIS

Applicability.

Acceptance of office.

Delegation.

Financial statements.

Standard of care.

Ultra vires acts.

Applicability.

Subsection (a)(3) of this section was inapplicable where the chancellor set aside the disputed transfer and ordered assets sold, where the proceeds of the sale were used to pay other creditors, presumably in order of their priority. *Smith v. Eastgate Properties, Inc.*, 312 Ark. 355, 849 S.W.2d 504 (1993).

Acceptance of Office.

There must be an acceptance of office of

director before any liability can flow from failure to discharge the duties of the office. *Zimmerman v. Western & S. Fire Ins. Co.*, 121 Ark. 408, 181 S.W. 283 (1915) (decision under prior law).

Delegation.

Duties of directors delegated to president may result in liability of directors. *Fletcher v. Eagle*, 74 Ark. 585, 86 S.W. 810 (1905); *Bailey v. O'Neal*, 92 Ark. 327, 122 S.W. 503 (1909) (preceding decisions under prior law).

Financial Statements.

An individual who endorsed a corporation's note was entitled to rely on the representation of the corporation's auditor regarding the firm's financial condition. *Rice-Stix Dry Goods Co. v. Montgomery*,

164 Ark. 161, 261 S.W. 325 (1924) (decision under prior law).

Standard of Care.

Directors are liable for failure to exercise diligence or good faith. *Sternberg v. Blaine*, 179 Ark. 448, 17 S.W.2d 286 (1929); *Johnson v. Coleman*, 179 Ark. 1087, 20 S.W.2d 186 (1929) (preceding decisions under prior law).

4-26-812. Officers.

(a)(1) The officers of a corporation shall consist of a president, one (1) or more vice presidents as may be prescribed by the bylaws, a secretary, and a treasurer, each of whom shall be elected by the board of directors at such time and in such manner as may be prescribed by the bylaws.

(2) Other officers and assistant officers and agents as may be deemed necessary may be elected or appointed by the board of directors or chosen in such other manner as may be prescribed by the bylaws.

(3) Any two (2) or more offices may be held by the same person, except the offices of president and secretary; provided, however, in the case of a one-shareholder corporation or where all of the voting stock of a corporation shall be owned by only one (1) stockholder any two (2) or more offices may be held by the same person.

(b) All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the corporation as may be provided in the bylaws, or as may be determined by resolution of the board of directors not inconsistent with the bylaws.

History. Acts 1965, No. 576, § 51; 1971, No. 362, § 1; 1973, No. 8, § 1; 1977, No. 317, § 1; A.S.A. 1947, § 64-310.

CASE NOTES

Powers.

There is no inherent power in a president and secretary to execute negotiable notes in the corporate name, and where such power has been exercised there is no presumption of authority for such authority must be specially delegated. *City Elec. S. Ry. v. First Nat'l Exch. Bank*, 62 Ark. 33, 34 S.W. 89 (1896) (decision under prior law).

The powers of officers are special and must be delegated to them by the charter and bylaws. *Anderson-Tully Co. v. Gillett Lumber Co.*, 155 Ark. 224, 244 S.W. 26 (1922) (decision under prior law).

Cited: *Robertson v. White*, 635 F. Supp. 851 (W.D. Ark. 1986).

4-26-813. Removal of officers.

Any officer or agent may be removed by the board of directors whenever in its judgment the best interests of the corporation will be served thereby, but removal shall be without prejudice to the contract

rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

History. Acts 1965, No. 576, § 52;
A.S.A. 1947, § 64-311.

4-26-814. Indemnification of officers, directors, employees, and agents.

(a)(1) A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed actions, suit, or proceeding, whether civil, criminal, administrative, or investigative, other than an action by or in the right of the corporation by reason of the fact that he is or was a director, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against expenses, including attorneys' fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with the action, suit, or proceeding if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful.

(2) The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(b) A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against expenses, including attorneys' fees, actually and reasonably incurred by him in connection with the defense or settlement of the action or suit if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the corporation. However, no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the corporation unless, and only to the extent that, the court in which the action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, the person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

(c) To the extent that a director, officer, employee, or agent of a corporation has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in subsections (a) or (b) of this section or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses, including attorneys' fees, actually and reasonably incurred by him in connection therewith.

(d) Any indemnification under subsections (a) or (b) of this section, unless ordered by a court, shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee, or agent is proper in the circumstances because he has met the applicable standards of conduct set forth in subsections (a) or (b) of this section. The determination shall be made by the board of directors by a majority vote of a quorum consisting of directors who were not parties to the action, suit, or proceeding, or, if such a quorum is not obtainable, or even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or by the shareholders.

(e) Expenses, including attorneys' fees, incurred in defending a civil or criminal action, suit, or proceeding may be paid by the corporation in advance of the final disposition of the action, suit, or proceeding as authorized in the manner provided in subsection (d) of this section upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay that amount unless it shall ultimately be determined that he is entitled to be indemnified by the corporation as authorized in this section.

(f) The indemnification provided by this section shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of shareholders, or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding office, and shall continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of such a person.

(g) A corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against any liability asserted against him and incurred by him in any capacity or arising out of his status as such, whether or not the corporation would have the power to indemnify him against liability under the provisions of this section.

(h) The powers and duties of a corporation to indemnify any person under this section shall apply with equal force whether an action, suit, or proceeding is threatened or commenced in this state or outside this state.

(i) This section shall apply to any action, suit, or proceeding threatened or commenced prior to February 12, 1973, which had not been

finally disposed of prior to February 12, 1973, and also shall apply to any action, suit, or proceeding threatened or commenced after February 12, 1973, but which is based in whole or in part on actions that occurred prior to February 12, 1973.

History. Acts 1965, No. 576, § 50; 1973, No. 94, §§ 1, 4; A.S.A. 1947, §§ 64-309, 64-309n.

RESEARCH REFERENCES

Ark. L. Rev. Legislative Note: Arkansas Adopts Model Act for Indemnification of Corporate Directors and Officers, 27 Ark. L. Rev. 754.

UALR L.J. Survey of Arkansas Law: Business Organizations, 6 UALR L.J. 83. Survey—Corporations, 10 UALR L.J. 549.

CASE NOTES

Cited: Robertson v. White, 633 F. Supp. 954 (W.D. Ark. 1986).

SUBCHAPTER 9 — MORTGAGE, SALE, ETC., OF ASSETS

SECTION.
4-26-901. Corporate indebtedness — Mortgage of assets authorized.
4-26-902. Sale, lease, or exchange of assets in regular course of business.

SECTION.
4-26-903. Sale, lease, or exchange of assets other than in regular course of business.
4-26-904. Sale or exchange of assets — Rights of dissenting shareholders.

Effective Dates. Acts 1965, No. 576, § 98: effective at midnight on Dec. 31, 1965.

RESEARCH REFERENCES

Am. Jur. 18B Am. Jur. 2d, Corp., § 2045 et seq.

C.J.S. 19 C.J.S., Corp., § 1088 et seq.

4-26-901. Corporate indebtedness — Mortgage of assets authorized.

In authorizing the procurement of corporate loans, the creation of obligations under which the corporation is to be primarily or secondarily liable; the issuance of corporate notes, bonds, and other obligations; and the mortgage and pledge of all or any part of the corporate assets, including after-acquired property, as security for any obligation so incurred, the board of directors shall not be required to procure any consent from or authorization by the shareholders except in the instance of the increase of bonded indebtedness of the corporation.

Where the bonded indebtedness is increased within the meaning of Arkansas Constitution, Article 12, § 8, shareholders' authorization of both the creation of the additional indebtedness and the lien securing the same shall be required in conformity with the constitutional provision.

History. Acts 1965, No. 576, § 78;
A.S.A. 1947, § 64-801.

CASE NOTES

ANALYSIS

Mortgages.

Stockholder ratification.

Mortgages.

Directors cannot mortgage corporate property to purchase stock of complaining stockholders. *Consumers Ice & Coal Co. v. Security Bank & Trust Co.*, 170 Ark. 530, 280 S.W. 677 (1926) (decision under prior law).

Where corporation's resolution gave apparent authority to its president to negotiate and procure loans from mortgagee, to give security for any liabilities of the corporation by pledge, assignment or lien, and to execute instruments for such purposes, the mortgage executed by the cor-

poration was valid. *Arkansas Iron & Metal Co. v. First Nat'l Bank*, 16 Ark. App. 245, 701 S.W.2d 380 (1985).

Stockholder Ratification.

Where board of directors enters into transaction and minutes of meeting where transaction was presented to the stockholders does not show that vote was taken by stockholders to ratify or approve the action of board, the court can assume that stockholder ratification was not necessary and that board was authorized to enter into transaction, the articles of incorporation not being introduced into evidence. *Ouachita Indus., Inc. v. Willingham*, 179 F. Supp. 493 (W.D. Ark. 1959) (decision under prior law).

4-26-902. Sale, lease, or exchange of assets in regular course of business.

The sale, lease, or exchange of all or substantially all the property and assets of a corporation, when made in the usual and regular course of the business of the corporation, may be made upon such terms and conditions and for such considerations, which may consist in whole or in part of money or real or personal property including shares of any other domestic or foreign corporation, as shall be authorized by its board of directors. In this case, no authorization or consent of the shareholders shall be required.

History. Acts 1965, No. 576, § 79;
A.S.A. 1947, § 64-802.

CASE NOTES

Purchase by Directors.

Purchase of all assets of corporation by directors is only to be voided for fraud at

instance of some party in interest. *Nedry v. Vaile*, 109 Ark. 584, 160 S.W. 880 (1913) (decision under prior law).

4-26-903. Sale, lease, or exchange of assets other than in regular course of business.

(a) A sale, lease, or exchange of all or substantially all the property and assets, with or without the good will, of a corporation, if not made in the usual and regular course of its business, may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or real or personal property including shares of any other domestic or foreign corporation as may be authorized in the following manner:

(1) The board of directors shall adopt a resolution recommending the sale, lease, or exchange and directing the submission of the sale, lease, or exchange to a vote at a meeting of shareholders which may be either an annual or a special meeting;

(2) Written or printed notice shall be given to each shareholder of record within the time and in the manner provided in this chapter for the giving of notice of special meetings of shareholders, and whether the meeting is an annual or a special meeting, the notice shall state that the purpose or one (1) of the purposes of the meeting is to consider the proposed sale, lease, or exchange;

(3)(A) At the meeting the shareholders may authorize the sale, lease, or exchange and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation. Each outstanding share of the corporation shall be entitled to vote thereon, whether or not entitled to vote by the provisions of the articles of incorporation.

(B) The authorization shall require the affirmative vote of the holders of at least two-thirds ($\frac{2}{3}$) of the outstanding shares of the corporation unless any class of shares is entitled to vote as a class, in which event this authorization shall require the affirmative vote of the holders of at least two-thirds ($\frac{2}{3}$) of the outstanding shares of each class of shares entitled to vote as a class and of the total outstanding shares.

(b) After the authorization by a vote of shareholders, the board of directors nevertheless, in its discretion, may abandon the sale, lease, or exchange of assets subject to the rights of third parties under any contracts relating thereto, without further action or approval by shareholders.

History. Acts 1965, No. 576, § 80;
A.S.A. 1947, § 64-803.

CASE NOTES

ANALYSIS

Purchase by directors.
Stockholder's consent.

Purchase by Directors.

Purchase of all assets of corporation by

directors is only to be voided for fraud at instance of some party in interest. *Nedry v. Vaile*, 109 Ark. 584, 160 S.W. 880 (1913) (decision under prior law).

Stockholder's Consent.

Lease by corporate officers who owned

four-fifths of stock was valid even though minority stockholders received no notice of the meeting. *Dixie Cab Co. v. Black & White Cab Co.*, 214 Ark. 624, 217 S.W.2d 602 (1949) (decision under prior law).

Where board of directors enters into transaction and minutes of meeting where transaction was presented to the stockholders does not show that vote was taken

by stockholders to ratify or approve the action of board, the court can assume that stockholder ratification was not necessary and that board was authorized to enter into transaction, the articles of incorporation not being introduced into evidence. *Ouachita Indus., Inc. v. Willingham*, 179 F. Supp. 493 (W.D. Ark. 1959) (decision under prior law).

4-26-904. Sale or exchange of assets — Rights of dissenting shareholders.

(a) In the event that a sale or exchange prior to dissolution of all or substantially all of the property and assets of a corporation otherwise than in the usual and regular course of its business is authorized by a vote of the shareholders of the corporation, any shareholder who shall have filed with the corporation a written objection thereto, prior to or at the meeting of shareholders at which the sale or exchange is authorized, and who shall not have voted in favor thereof may, within ten (10) days after the date on which the vote was taken, make written demand on the corporation for the payment to him of the fair value of his shares as of the day prior to the date on which the vote was taken.

(b) If the sale or exchange is effected, the corporation shall pay to such shareholder upon surrender of his certificate or certificates representing such shares the fair value thereof.

(c) The demand shall state the number and class of the shares owned by any dissenting shareholder.

(d) Any shareholder failing to make demand within the ten-day period shall be bound by the terms of the sale or exchange.

(e) Within ten (10) days after the sale or exchange is effected, the corporation shall give notice to each dissenting shareholder who has made demand as herein provided for the payment of the fair value of his shares.

(f)(1) If within thirty (30) days after the date on which the sale or exchange was effected the value of the shares is agreed upon between the dissenting shareholder and the corporation, payment shall be made within ninety (90) days after the date on which the sale or exchange was effected upon the surrender of his certificate or certificates representing the shares. Upon payment of the agreed value, the dissenting shareholder shall cease to have any interest in the shares or in the corporation.

(2)(A) If within such period of thirty (30) days the shareholder and the corporation do not so agree, then the dissenting shareholder, within sixty (60) days after the expiration of the thirty-day period, may file a petition in the circuit court of the county in which the registered office of the corporation is located asking for a finding and determination of the fair value of the shares and shall be entitled to judgment against the corporation for the amount of the fair value as of the day prior to the date on which the vote was taken approving the

sale or exchange, together with interest thereon to the date of the judgment.

(B) The judgment shall be payable only upon and simultaneously with the surrender to the corporation of the certificate or certificates representing the shares.

(C) Upon payment of the judgment, the dissenting shareholder shall cease to have any interest in the shares or in the corporation.

(D) Unless the dissenting shareholder shall file a petition within the time herein limited, such shareholder and all persons claiming under him shall be bound by the terms of the sale or exchange.

(g) The right of a dissenting shareholder to be paid the fair value of his shares as provided herein shall cease if and when the corporation abandons the sale or exchange or the shareholders revoke the authority to make the sale or exchange.

(h) Shares acquired by the corporation pursuant to the payment of the agreed value thereof or to payment of the judgment entered therefor, as in this section provided, may be held and disposed of by the corporation as in the case of other treasury shares.

History. Acts 1965, No. 576, § 81;
A.S.A. 1947, § 64-804.

RESEARCH REFERENCES

Ark. L. Rev. De Facto Merger in the Corporate Partnership Context, 27 Ark. L. Rev. 737.

UALR L.J. Survey—Corporations, 10 UALR L.J. 549.

CASE NOTES

ANALYSIS

De facto mergers.
Fair value.
Written demand.

De Facto Mergers.

Minority stockholders were entitled to a fair appraisal of their stock in corporation where de facto merger had occurred. Pratt v. Ballman-Cummings Furn. Co., 261 Ark. 396, 549 S.W.2d 270 (1977).

Fair Value.

The chancellor did not err by substituting the equitable remedy of foreclosure for the legal remedy of determining the fair value of the shares of a dissenting shareholder of a closely held corporation under subdivision (f)(2)(A) when acting pursu-

ant to the clean-up doctrine. Smith v. Eastgate Properties, Inc., 312 Ark. 355, 849 S.W.2d 504 (1993).

There is no set formula or standard for determining fair value. Smith v. Eastgate Properties, Inc., 312 Ark. 355, 849 S.W.2d 504 (1993).

Written Demand.

Where the appellant failed to comply with subsection (a)'s requirement of a written demand to the corporation for payment of the fair market value of his shares of the corporation's stock, subsection (d) required denial of his complaint for an accounting of the proceeds of the sale of corporate property. Moon v. Moon Enters., Inc., 65 Ark. App. 246, 987 S.W.2d 284 (1999).

SUBCHAPTER 10 — MERGER AND CONSOLIDATION

SECTION.

- 4-26-1001. Domestic corporations — Procedure for merger.
- 4-26-1002. Domestic corporations — Procedure for consolidation.
- 4-26-1003. Domestic corporations — Approval of plan of merger or consolidation by shareholders — Abandonment.
- 4-26-1004. Domestic corporations — Articles of merger or consolidation.
- 4-26-1005. Domestic corporations — Ef-

SECTION.

- fect of merger or consolidation.
- 4-26-1006. Merger or consolidation of domestic and foreign corporations.
- 4-26-1007. Rights of dissenting shareholders.
- 4-26-1008. Continuance of corporate existence in aid of title transfers.
- 4-26-1009. Merger of subsidiary by parent.

Effective Dates. Acts 1965, No. 576, § 98: effective at midnight on Dec. 31, 1965.

Acts 1985, No. 416, § 4: Mar. 19, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that confusion exists regarding the legality of triangular mergers; that triangular mergers are in many instances in the best interests of not only the business community but the citizens of the State; that some entities are negotiating for such mergers presently and therefore this law should become effective immediately in order to eliminate the confusion and facilitate the negotiations now in progress. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 606, § 3: Mar. 26, 1985. Emergency clause provided: "It is hereby found and determined by the Arkansas

General Assembly that the existing statutes authorizing corporations to merge or consolidate do not provide for plans of merger or consolidation including provisions for converting shares of each of the constituent corporations into shares, obligations or other securities of other corporations or, in whole or in part, into cash or other property, that corporations organized under the laws of the State of Arkansas desiring to avail themselves of the advantages associated with such plans of reorganization are forced to consummate such transactions under the laws of other states thereby denying to the State of Arkansas the fees and other revenues associated therewith, and that it is in the public interest to provide for such plans of reorganization under Arkansas Law therefore, an emergency is found to exist and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

RESEARCH REFERENCES

ALR. Products liability: form of business organization of successor. 32 ALR 4th 196.

Merger or consolidation of corporate lessee as breach of clause in lease prohibiting, conditioning, or restricting assignment of sublease. 39 ALR 4th 879.

Fidelity bond termination clause on taking over of insured by another business

entity, construction and effect. 44 ALR 4th 1195.

Duty of corporate directors to exercise "informed" judgment in recommending responses to merger or tender offers. 46 ALR 4th 887.

"Golden parachute" defense to hostile corporate takeover. 66 ALR 4th 138.

Lock-up option defense to hostile corpo-

rate takeover. 66 ALR 4th 180.

Time when cause of action accrues for civil action under state antitrust, monopoly, or restraint of trade statutes. 90 ALR 4th 1102.

Liability of successor corporation for punitive damages for injury caused by predecessor's product. 55 ALR 4th 166.

Am. Jur. 19 Am. Jur. 2d, Corp., § 2503 et seq.

Ark. L. Rev. Tax Considerations of Fundamental Corporate Changes, 17 Ark. L. Rev. 444.

De Facto Merger in the Corporate Partnership Context, 27 Ark. L. Rev. 737.

C.J.S. 19 C.J.S., Corp., § 1603 et seq.

4-26-1001. Domestic corporations — Procedure for merger.

(a) Any two (2) or more domestic corporations may merge into one (1) of the corporations pursuant to a plan of merger approved in the manner provided in this chapter.

(b) The board of directors of each corporation, by resolution adopted by each board, shall approve a plan of merger setting forth:

(1) The names of the corporations proposing to merge and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation;

(2) The terms and conditions of the proposed merger;

(3) The manner and basis of converting the shares of each merging corporation into shares or other securities or obligations of the surviving corporation or of any other corporation or, in whole or in part, into cash or other property;

(4) A statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger;

(5) The time when the merger shall become effective;

(6) Other provisions with respect to the proposed merger as are deemed necessary or desirable.

History. Acts 1965, No. 576, § 70; 1985, No. 416, § 1; 1985, No. 606, § 1; A.S.A. 1947, § 64-701.

4-26-1002. Domestic corporations — Procedure for consolidation.

(a) Any two (2) or more domestic corporations may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in this chapter.

(b) The board of directors of each corporation, by a resolution adopted by each board, shall approve a plan of consolidation setting forth:

(1) The names of the corporations proposing to consolidate and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation;

(2) The terms and conditions of the proposed consolidations;

(3) The manner and basis of converting the shares of each corporation into shares or other securities or obligations of the new corporation

or of any other corporation or, in whole or in part, into cash or other property;

(4) With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this chapter;

(5) The time when the consolidation shall become effective;

(6) Other provisions with respect to the proposed consolidation as are deemed necessary or desirable.

History. Acts 1965, No. 576, § 71;
1985, No. 416, § 2; 1985, No. 606, § 2;
A.S.A. 1947, § 64-702.

4-26-1003. Domestic corporations — Approval of plan of merger or consolidation by shareholders — Abandonment.

(a) The board of directors of each corporation, upon approving the plan of merger or plan of consolidation, shall, by resolution, direct that the plan be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(b) Written or printed notice shall be given to each shareholder of record not less than twenty (20) days before the meeting in the manner provided in this chapter for the giving of notice of meetings of shareholders and shall state the purpose of the meeting, whether the meeting be an annual or a special meeting. A copy or a summary of the plan of merger or plan of consolidation, as the case may be, shall be included in or enclosed with the notice.

(c)(1) At each meeting, a vote of the shareholders shall be taken on the proposed plan of merger or consolidation.

(2) Each outstanding share of each corporation shall be entitled to vote on the proposed plan of merger or consolidation, whether or not such share has voting rights under the provisions of the articles of incorporation of the corporation.

(d)(1) The plan of merger or consolidation shall be approved upon receiving the affirmative vote of the holders of at least two-thirds ($\frac{2}{3}$) of the outstanding shares of each corporation, unless any class of shares of any corporation is entitled to vote as a class thereon, in which event, as to that corporation, the plan of merger or consolidation shall be approved upon receiving the affirmative vote of the holders of at least two-thirds ($\frac{2}{3}$) of the outstanding shares of each class of shares entitled to vote as a class thereon and of the total outstanding shares.

(2) Any class of shares of any such corporation shall be entitled to vote as a class if the plan of merger or consolidation, as the case may be, contains any provision which, if contained in a proposed amendment to articles of incorporation, would entitle the class of shares to vote as a class.

(e) After the approval by a vote of the shareholders of each corporation and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant

to provisions therefor, if any, set forth in the plan of merger or consolidation.

History. Acts 1965, No. 576, § 72;
A.S.A. 1947, § 64-703.

4-26-1004. Domestic corporations — Articles of merger or consolidation.

Upon approval, articles of merger or articles of consolidation shall be executed by each corporation and filed in accordance with § 4-26-1201, which articles shall be verified by one of the officers of each corporation signing the same and shall set forth:

- (1) The plan of merger or the plan of consolidation, including the time when it shall become effective;
- (2) As to each corporation, the number of shares outstanding and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class;
- (3) As to each corporation, the number of shares voted for and against the plan, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each class voted for and against the plan, respectively.

History. Acts 1965, No. 576, § 73;
A.S.A. 1947, § 64-704.

4-26-1005. Domestic corporations — Effect of merger or consolidation.

(a) The merger or consolidation shall become effective upon the filing in accordance with § 4-26-1201 of the articles of merger or consolidation or at such time, not more than sixty (60) days after the filing, as may be specified in the articles as the time when the merger or consolidation shall become effective.

(b) When the merger or consolidation has been effected:

(1) The several corporations parties to the plan of merger or consolidation shall be a single corporation which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation.

(2) Subject to § 4-26-1008, the separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease.

(3) The surviving or new corporation shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a corporation organized under this chapter.

(4) The surviving or new corporation shall possess all the rights, privileges, immunities, and franchises, of a public as well as of a private nature, of each of the merging or consolidating corporations.

(5) All real, personal, and mixed property and all debts due on whatever account, including subscriptions to shares, and all other choses in action, and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in the single corporation without further act or deed. The title to any real estate, or any interest therein, vested in any of the corporations shall not revert or be in any way impaired by reason of the merger or consolidation.

(6) Such surviving or new corporation shall henceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated. Any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted as if the merger or consolidation had not taken place, or such surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by the merger or consolidation.

(7) In the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the plan of merger. In the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under this chapter shall be deemed to be the original articles of incorporation of the new corporation.

(8) The surplus accounts of the surviving or new corporation in case of a merger or consolidation shall be subject to § 4-26-607.

History. Acts 1965, No. 576, § 74;
A.S.A. 1947, § 64-705.

CASE NOTES

ANALYSIS

Liabilities.
Net operating losses.
Worker's compensation.

Liabilities.

Where one corporation is merely a reorganization or continuation of another corporation, the former is liable on the contracts of the latter. *Meeks v. Arkansas Light & Power Co.*, 147 Ark. 232, 227 S.W. 405 (1921) (decision under prior law).

Net Operating Losses.

Where the business of the surviving corporation was not altered, enlarged, or materially affected by the merger, but constituted a continuation of business enterprise on a sounder financial basis, a net operating loss carryover of the merged corporation was available to the surviving

corporation as a deduction for state income tax purposes. *Bracy Dev. Co. v. Milam*, 252 Ark. 268, 478 S.W.2d 765 (1972).

Worker's Compensation.

Where plaintiff/employee had a third party claim against his tortfeasor at the time of his accident, and the tortfeasor subsequently merged with the plaintiff's employer, an action could be brought against his employer under the dual persona doctrine, in the employer's status as the successor corporation of the tortfeasor. *Thomas ex rel. City Nat'l Bank v. Valmac Indus., Inc.*, 306 Ark. 228, 812 S.W.2d 673 (1991), overruled on other grounds, *Stanton v. Larry Fowler Trucking*, 52 F.3d 723 (8th Cir. 1995).

Cited: *Carter Oil Co. v. Apex Towing Co.*, 532 F. Supp. 364 (E.D. Ark. 1981).

4-26-1006. Merger or consolidation of domestic and foreign corporations.

(a) One (1) or more foreign corporations and one (1) or more domestic corporations may be merged or consolidated in the following manner if the merger or consolidation is permitted by the laws of the state or country under which each foreign corporation is organized:

(1) Each domestic corporation shall comply with the provisions of this chapter with respect to the merger or consolidation, as the case may be, of domestic corporations, and each foreign corporation shall comply with the applicable provisions of the laws of the state or country under which it is organized.

(2) If the surviving or new corporation, as the case may be, is to be governed by the laws of any state or country other than this state, it shall comply with the laws of Arkansas with respect to the admission of foreign corporations if it is to transact business in this state, and moreover, it shall file with the Secretary of State of this state:

(A) An agreement that it may be served with process in this state in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to the merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder of any domestic corporation against the surviving or new corporation;

(B) An irrevocable appointment of the Secretary of State of this state as its agent to accept service of process in any proceeding; and

(C) An agreement that it will promptly pay to the dissenting shareholders of any domestic corporation the amount, if any, to which they shall be entitled under the provisions of this chapter with respect to the rights of dissenting shareholders.

(b) The effect of the merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations if the surviving or new corporation is to be governed by the laws of this state. If the surviving or new corporation is to be governed by the laws of any state or country other than this state, the effect of this merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except insofar as the laws of the other state provide otherwise.

History. Acts 1965, No. 576, § 75;
A.S.A. 1947, § 64-706.

4-26-1007. Rights of dissenting shareholders.

(a) If a shareholder of a corporation which is a party to a merger or consolidation files with the corporation, prior to or at the meeting of shareholders at which the plan of merger or consolidation is submitted to a vote, a written objection to the plan of merger or consolidation and does not vote in favor thereof, and the shareholder within ten (10) days after the date on which the vote was taken makes written demand on the surviving or new domestic or foreign corporation for payment of the

fair value of his shares as of the day prior to the date on which the vote was taken approving the merger or consolidation, then, if the merger or consolidation is effected, the surviving or new corporation shall pay to the shareholder, upon surrender of his certificate or certificates representing the shares, the fair value thereof.

(b) The demand shall state the number and class of the shares owned by the dissenting shareholder.

(c) Any shareholder failing to make demand within the ten-day period shall be bound by the terms of the merger or consolidation.

(d) Within ten (10) days after the merger or consolidation is effected, the surviving or new corporation, as the case may be, shall give notice to each dissenting shareholder who has made demand as herein provided for the payment of the fair value of his shares.

(e)(1) If within thirty (30) days after the date on which the merger or consolidation was effected the value of such shares is agreed upon between the dissenting shareholder and the surviving or new corporation, payment shall be made within ninety (90) days after the date on which such merger or consolidation was effected, upon the surrender of his certificate or certificates representing those shares.

(2) Upon payment of the agreed value, the dissenting shareholder shall cease to have any interest in those shares or in the corporation.

(f)(1) If within the period of thirty (30) days the shareholder and the surviving or new corporation do not so agree, then the dissenting shareholder, within sixty (60) days after the expiration of the thirty-day period, may file a petition in the circuit court of the county in which the registered office of the surviving corporation is located, if the surviving corporation is a domestic corporation or in the Pulaski County Circuit Court if the surviving corporation is a foreign corporation, asking for a finding and determination of the fair value of the shares and shall be entitled to judgment against the surviving or new corporation for the amount of the fair value as of the day prior to the date on which the vote was taken approving such merger or consolidation, together with interest thereon to the date of the judgment.

(2) The judgment shall be payable only upon and simultaneously with the surrender to the surviving or new corporation of the certificate or certificates representing the shares.

(3) Upon payment of the judgment, the dissenting shareholder shall cease to have any interest in the shares or in the surviving or new corporation.

(4) Unless the dissenting shareholder files the petition within the time herein limited, the shareholder and all persons claiming under him shall be bound by the terms of the merger or consolidation.

(g) Shares acquired by the surviving or new corporation pursuant to the payment of the agreed value thereof or to payment of the judgment entered, as in this section provided, may be held and disposed of by the corporation as in the case of other treasury shares.

(h) The provisions of this section shall not apply to a merger if, on the date of the filing of the articles of merger, the surviving corporation is

the owner of all the outstanding shares of the other domestic or foreign corporations that are parties to the merger.

History. Acts 1965, No. 576, § 76;
A.S.A. 1947, § 64-707.

RESEARCH REFERENCES

UALR L.J. Arkansas Law Survey, Survey—Corporations, 10 UALR L.J. 549.
Wiltshire, Business Law, 9 UALR L.J. 83.

CASE NOTES

ANALYSIS

De facto mergers.
Fraud.
Value of stock.
Written objection.

De Facto Mergers.

Evidence that two corporations formed a partnership, sold their merchandise to the partnership, and appointed one person as manager of the partnership to handle all merchandising and accounting procedures established a prima facie case of de facto merger of the corporations entitling minority stockholders to be paid for their stock. *Pratt v. Ballman-Cummings Furn. Co.*, 254 Ark. 570, 495 S.W.2d 509 (1973), aff'd, 261 Ark. 396, 549 S.W.2d 270 (1977).

Minority stockholders are entitled to a fair appraisal of their stock in corporation where existence of a partnership agreement between two corporations, controlled by the same family and having interlocking directors, resulted in the cessation of operating functions in that corporation and court found that de facto merger had occurred. *Pratt v. Ballman-Cummings Furn. Co.*, 261 Ark. 396, 549 S.W.2d 270 (1977).

Fraud.

Remedies granted by former similar section were not exclusive where fraud is present, thus where a minority shareholder was fraudulently induced to vote for a merger, he was entitled to payment for his shares. *Victor Broadcasting Co. v. Mahurin*, 236 Ark. 196, 365 S.W.2d 265 (1963) (decision under prior law).

Value of Stock.

Prospectuses prepared up to six years before the merger listing selling prices of

stock given in exchange for property could be permitted in evidence since the selling price of the stock was simply another circumstance in determining the overall value of the property. *General Sec. Corp. v. Watson*, 251 Ark. 1066, 477 S.W.2d 461 (1972).

Where a stockbroker who had made an evaluation of the stock involved in a merger testified as to its value and it appeared he had considered facts and circumstances that were relevant, there was sufficient evidence to support the jury's finding which corresponded with the witness's opinion. *General Sec. Corp. v. Watson*, 251 Ark. 1066, 477 S.W.2d 461 (1972).

Written Objection.

This section requires timely compliance with the requirement of a written objection to the proposed merger; where the written objection was given one and one-half hours after the shareholders' meeting had adjourned, the minority shareholders were not entitled to have a judicially determined price for their minority shares. *Gibson ex rel. Strong Co. v. Strong Co.*, 288 Ark. 615, 708 S.W.2d 603 (1986).

Where the majority shareholders' attorney was not guilty of any wrongful conduct which caused the minority shareholders' attorney to fail to comply with the requirement of a written objection to the proposed merger, the majority shareholders were not estopped from demanding compliance with this section. *Gibson ex rel. Strong Co. v. Strong Co.*, 288 Ark. 615, 708 S.W.2d 603 (1986).

The fact that the corporation was closely held and there was no real doubt in the majority shareholders' minds that the minority shareholders did not want to be squeezed out of the corporation was not

sufficient to find compliance with the requirement of a written objection to the proposed merger. *Gibson ex rel. Strong*

Co. v. Strong Co., 288 Ark. 615, 708 S.W.2d 603 (1986).

4-26-1008. Continuance of corporate existence in aid of title transfers.

(a)(1) The corporate existence of each constituent corporation which has been dissolved through merger or consolidation shall be continued indefinitely without franchise tax liability for the limited purpose of enabling the constituent corporation to execute, through its own officers, formal deeds, conveyances, assignments, and other instruments evidencing the transfer from the constituent to the surviving corporation, or new corporation created by consolidation, of any or all real and personal properties which have passed from the constituent to the surviving or consolidated corporation by operation of law.

(2) The execution of the instruments shall not be essential to effect the transfer of title from the constituent to the surviving or consolidated corporation inasmuch as the transfer will take effect through operation of law; but the power to execute the instruments is given to the end that it may be exercised in respect to properties located in foreign jurisdictions which may not recognize a transmittal of title by operation of law under the merger and consolidation statutes of this state and in any other situation where the directors of the surviving or consolidated corporation consider the execution of the instruments desirable.

(b)(1) This state will recognize and give effect to a transfer of personal property having a situs in this state which is effected by operation of the laws of another state through a corporate merger or consolidation at any time conducted under the laws of such other state or states.

(2)(A) This state will recognize and give effect to a transfer of title to real estate located in this state effected by operation of law through such a merger or consolidation conducted under the laws of one (1) or more other states on condition that one of the following, certified by the secretary of the state in which the surviving or consolidated corporation is domiciled, shall be filed for record with the Secretary of State of this state:

(i) A copy of the agreement of merger or consolidation, executed between the merging or consolidating corporations; or

(ii) A copy of the certificate of merger executed by the surviving corporation as evidence of a vertical or downstream merger of a subsidiary by a parent corporation.

(B) The Secretary of State shall receive the filing whether or not the surviving or consolidated corporation desires to be admitted to this state.

History. Acts 1965, No. 576, § 77;
A.S.A. 1947, § 64-708.

4-26-1009. Merger of subsidiary by parent.

(a)(1) Any corporation owning at least ninety-five percent (95%) of the outstanding shares of each class of another corporation may merge the other corporation into itself without approval by a vote of the shareholders of either corporation.

(2) Its board of directors shall, by resolution, approve a plan of merger setting forth:

(A) The name of the subsidiary corporation and the name of the corporation owning at least ninety-five percent (95%) of its shares, which is hereinafter designated as the surviving corporation;

(B) The manner and basis of converting the shares of the subsidiary corporation into shares or other securities or obligations of the surviving corporation or the cash or other consideration to be paid or delivered upon surrender of each share of the subsidiary corporation.

(3) A copy of the plan of merger shall be mailed to each shareholder of record of the subsidiary corporation.

(b) Articles of merger shall be executed by the surviving corporation in accordance with § 4-26-1201 and shall be verified by one (1) of the officers signing the same, and shall set forth:

(1) The plan of merger, including the time when it shall become effective;

(2) The number of outstanding shares of each class of the subsidiary corporation and the number of shares of each class owned by the surviving corporation; and

(3) The date of the mailing to shareholders of the subsidiary corporation of a copy of the plan of merger.

(c) On and after the thirtieth day after the mailing of a copy of the plan of merger to shareholders of the subsidiary corporation, or upon the waiver thereof by the holders of all outstanding shares, the articles of merger shall be filed with the Secretary of State in accordance with § 4-26-1201, and the merger shall become effective upon the filing or at such other time, not more than sixty (60) days after the filing, as may be specified in the articles as the time when the merger shall become effective.

(d)(1) In the event that all of the stock of a subsidiary Arkansas corporation party to a merger effected under this section is not owned by the parent corporation immediately prior to the merger, the surviving corporation, within ten (10) days after the date on which articles of merger have been filed in accordance with § 4-26-1201, shall notify each shareholder of the Arkansas corporation that the articles of merger have been filed and of the terms and conditions of the merger.

(2) The notice shall be sent by certified or registered mail, return receipt requested, addressed to the shareholder at his last known address as it appears on the books of the corporation.

(3) If any such shareholder, within ten (10) days after the date of mailing of the notice, objects in writing to the merger and demands in writing from the surviving corporation payment for his stock, the

surviving corporation, within thirty (30) days after the expiration of the period of ten (10) days, shall pay to him the value of his stock as of the day prior to the date on which the articles of merger were filed, exclusive of any element of value arising from the expectation or accomplishment of said merger.

(4) If, during the period of thirty (30) days provided for herein, the surviving corporation and any objecting shareholder fail to agree as to the value of the stock, any such shareholder, within sixty (60) days after the expiration of the thirty-day period, may file a petition as provided in § 4-26-1007(f)(1) asking for a finding and determination of the fair value of the shares and shall be entitled to judgment against the surviving corporation for the amount of the fair value as of the day prior to the date on which the articles of merger were filed, together with interest thereon to the date of the judgment.

(5) The judgment shall be payable only upon and simultaneously with the surrender to the surviving corporation of the certificate or certificates representing the shares.

(6) Upon payment of the judgment, the objecting shareholder shall cease to have any interest in the shares or in the surviving corporation.

(7) Unless the objecting shareholder files the petition within the time herein limited, the shareholder and all persons claiming under him shall be bound by the terms of the merger.

(e) Shares acquired by the surviving corporation pursuant to the payment of the agreed value thereof or to payment of the judgment entered therefor as in this section provided may be held and disposed of by the corporation as in the case of other treasury shares.

History. Acts 1965, No. 576, § 77.1;
A.S.A. 1947, § 64-709.

SUBCHAPTER 11 — DISSOLUTION AND LIQUIDATION

SECTION.

- 4-26-1101. Authorization of dissolution.
- 4-26-1102. Certificate of dissolution.
- 4-26-1103. Procedure after dissolution.
- 4-26-1104. Corporate action and remedies after dissolution.
- 4-26-1105. Notice to creditors — Filing or barring claims.
- 4-26-1106. Jurisdiction of court to supervise liquidation.

SECTION.

- 4-26-1107. Involuntary dissolution.
- 4-26-1108. Jurisdiction of court to liquidate assets and business of corporation.
- 4-26-1109. Deposit with Treasurer of State of amount due certain creditors or shareholders.

Effective Dates. Acts 1965, No. 576,
§ 98: effective at midnight on Dec. 31,
1965.

RESEARCH REFERENCES

ALR. Insolvency of insurance company justifying state dissolution proceedings and the like. 17 ALR 4th 16.

Court-ordered dissolution: inability to operate at profit as justification for. 20 ALR 4th 122.

Action against former director, officer, or stockholder in dissolved corporation for personal injuries incurred after final dissolution. 20 ALR 4th 414.

Relief other than by dissolution in cases of intracorporate deadlock or dissension. 34 ALR 4th 13.

Reinstatement of repealed, forfeited, expired, or suspended corporate charter as validating interim acts of corporation. 42 ALR 4th 392.

Liability of shareholders, directors, and officers where corporate business is continued after its dissolution. 72 ALR 4th 419.

Liability of corporate custodian for negligence in dealing with affairs or assets of corporation. 74 ALR 4th 770.

Am. Jur. 19 Am. Jur. 2d, Corp., § 2733 et seq.

Ark. L. Rev. Tax Considerations of Fundamental Corporate Changes, 17 Ark. L. Rev. 444.

Dissolution and Liquidation of Arkansas Corporations, 21 Ark. L. Rev. 490.

C.J.S. 19 C.J.S., Corp., § 1638 et seq.

CASE NOTES

Cited: Schmidt v. Pearson, Evans, & Chadwick, 326 Ark. 499, 931 S.W.2d 774 (1996).

4-26-1101. Authorization of dissolution.

(a) A corporation may be dissolved.

(b) The dissolution shall be authorized at a meeting of shareholders which is held after notice to all shareholders, whether or not entitled to vote, by the vote of the holders of two-thirds ($\frac{2}{3}$) of all outstanding shares entitled to vote thereon unless any class of shares is entitled to vote as a class, in which event the resolution of dissolution shall be adopted upon receiving the affirmative vote of the holders of two-thirds ($\frac{2}{3}$) of the outstanding shares of each class entitled to vote thereon as a class and of the total outstanding shares.

History. Acts 1965, No. 576, § 83; A.S.A. 1947, § 64-901.

RESEARCH REFERENCES

UALR L.J. Survey—Corporations, 10 UALR L.J. 549.

4-26-1102. Certificate of dissolution.

(a) After a dissolution has been voted by the shareholders, a certificate of dissolution shall be executed by the president or a vice-president of the corporation and attested by the secretary or an assistant secretary of the corporation.

(b) This certificate shall be verified by at least one (1) of the officers signing it and shall show:

- (1) The name of the corporation;
- (2) The names and respective addresses of its officers;
- (3) The names and respective addresses of its directors;
- (4) A copy of the shareholders' resolution directing the dissolution of the corporation;

(5) The number of shares outstanding and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class;

(6) The number of shares voted for and against the resolution, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each class voted for and against the resolution.

(c) The certificate shall be executed and filed in accordance with § 4-26-1201.

(d) Upon the filing of the certificate with the Secretary of State, the corporation is dissolved. Franchise tax liability shall terminate as of the end of the tax year in which the dissolution is voted.

History. Acts 1965, No. 576, § 84;
A.S.A. 1947, § 64-902.

CASE NOTES

Cited: Larey v. Mountain Valley Spring Co., 245 Ark. 689, 434 S.W.2d 820 (1968).

4-26-1103. Procedure after dissolution.

After dissolution:

(1) The corporation shall carry on no business except for the purpose of winding up its affairs;

(2) The corporation shall proceed to wind up its affairs, with power to fulfill or discharge its contracts, collect its assets, sell its assets at public or private sale, discharge or pay its liabilities, and do all other acts appropriate to liquidate its business;

(3) After paying or adequately providing for the payment of its liabilities:

(A)(i) The corporation, if authorized at a meeting of shareholders which is to be held on notice to all shareholders, whether or not entitled to vote, by a vote of a majority of all outstanding shares entitled to vote thereon, may sell its remaining assets or any part thereof for cash or for shares, bonds, or other securities of another corporation, or partly for cash and partly for such securities, and distribute the same among the shareholders according to their respective rights.

(ii) Unless the consideration for the sale is payable concurrently with the consummation thereof entirely in cash, any shareholder, whether or not entitled to vote thereon, if prior to the meeting or at

the meeting but before a vote, he shall have given the corporation written notice of his objection to a sale except wholly upon a cash basis and, if a voting shareholder, did not vote for the proposed sale, within ten (10) days after the date on which the sale was voted by the shareholders, may make a written demand on the corporation for the payment to him in cash of the value of his shares determined as of the day immediately preceding the day on which the vote was taken. In this event, upon tendering his share certificates to the corporation, the shareholder shall be entitled to receive the cash payment after the sale is effected, the rights of the dissenting shareholder to be enforced under the procedure prescribed in § 4-26-904;

(B) The corporation, whether or not it has made a sale under subdivision (3)(A) of this section, may distribute its remaining assets, including the proceeds of any sale under subdivision (3)(A) of this section above, in cash or, subject to subdivision (3)(A) of this section, in kind, or partly each, among its shareholders according to their respective rights.

History. Acts 1965, No. 576, § 85;
A.S.A. 1947, § 64-903.

RESEARCH REFERENCES

UALR L.J. Survey—Corporations, 10
UALR L.J. 549.

CASE NOTES

Cited: *Winchel v. Craig*, 55 Ark. App.
373, 934 S.W.2d 946 (1996).

4-26-1104. Corporate action and remedies after dissolution.

(a) A dissolved corporation, its directors, officers, and shareholders, may continue to function for the sole purpose of winding up the affairs of the corporation in the same manner as if the dissolution had not taken place. For this limited purpose, the existence of the corporation as a legal entity shall be preserved indefinitely without franchise tax liability.

(b) In particular, and without limiting the generality of the foregoing:

(1) The directors of a dissolved corporation shall not be deemed to be trustees of its assets; title to the assets shall not vest in them or in the shareholders but shall remain in the corporation until transferred by it in its corporate name;

(2) Dissolution shall not change quorum or voting requirements of the board or shareholders or provisions regarding election, appointment, resignation, removal of, or filling vacancies among directors or officers or provisions regarding amendment or repeal of bylaws or adoption of new bylaws. In other words, subject to the limitation that the activities of the corporation shall be restricted to winding up its

affairs, all of the predissolution powers and procedures shall be preserved indefinitely;

(3) Shares of the corporation may be transferred;

(4) The corporation may sue or be sued in its corporate name in all courts and participate in actions and proceedings, whether judicial, administrative, or otherwise, in its corporate name. Process may be served upon it or upon its behalf in the same manner as if there had been no dissolution;

(5) The dissolution of a corporation shall not affect any remedy available to or against the corporation, its directors, officers, or shareholders, for any right or claim existing or any liability which is incurred before the dissolution except as provided in § 4-26-1105 (notice to creditors) or § 4-26-1106 (jurisdiction of court to supervise liquidation).

History. Acts 1965, No. 576, § 86;
A.S.A. 1947, § 64-904.

CASE NOTES

ANALYSIS

Corporation with forfeited charter.
Suits.
Tax liability.

Corporation with Forfeited Charter.

Since a corporation with a forfeited charter continues to have vitality as a dissolved corporation, its powers should be at least equivalent to those of a dissolved corporation winding up its affairs. *Gibson v. Dennis (In re Russell)*, 123 Bankr. 48 (Bankr. W.D. Ark. 1990).

A dissolved corporation retains legal title to its assets until a proper conveyance to the shareholders, and it follows that a corporation with a forfeited charter would likewise retain legal title. *Gibson v. Dennis (In re Russell)*, 123 Bankr. 48 (Bankr. W.D. Ark. 1990).

This section clearly provides that a dissolved corporation has the power to sue and defend, and no Arkansas case under the applicable statutory scheme has held that a corporation whose charter has been forfeited has lost its capacity to sue.

Gibson v. Dennis (In re Russell), 123 Bankr. 48 (Bankr. W.D. Ark. 1990).

Suits.

A corporation, even though dissolved, may continue the defense of a suit. *Hirsch v. Walker*, 212 Ark. 79, 204 S.W.2d 904 (1947) (decision under prior law).

A derivative action, brought by certain shareholders of company seeking to recover damages for injuries sustained by corporation against certain claimants survived the filing of the certificate of dissolution of the company. *Raines v. Toney*, 228 Ark. 1170, 313 S.W.2d 802 (1958) (decision under prior law).

Tax Liability.

The enactment of this section did not make the corporation liable for income tax on profit realized from the sale of its assets pursuant to liquidation for distribution to the shareholders, but such liability was upon the shareholders. *Larey v. Mountain Valley Spring Co.*, 245 Ark. 689, 434 S.W.2d 820 (1968).

4-26-1105. Notice to creditors — Filing or barring claims.

(a)(1) At any time after dissolution, the corporation may, at its option, give a notice requiring all creditors and claimants, including any with unliquidated or contingent claims and any with whom the corporation has unfulfilled contracts, to present their claims in writing and in detail at a specified place and in a specified manner within one hundred twenty (120) days after the first publication of the notice.

(2) The notice if given shall be published at least once a week for three (3) successive weeks in a newspaper of general circulation in the county in which the principal place of business or, if no principal place of business, the registered office of the corporation was located at the date of dissolution.

(3) On or before the date of the first publication of the notice, the corporation shall mail a copy thereof, postage prepaid and addressed to his last known address, to each person believed to be a creditor of or claimant against the corporation whose name and address are known to or can with due diligence be ascertained by the corporation.

(4) The giving of notice shall not constitute a recognition that any person is a proper creditor or claimant and shall not revive or make valid, or operate as a recognition of the validity of, or a waiver of any defense or counterclaim in respect of, any claim against the corporation, its assets, directors, officers, or shareholders, which has been barred by any statute of limitations or becomes invalid by any cause, or in respect of which the corporation, its directors, officers, or shareholders, has any defense or counterclaim.

(b)(1) Any claims which shall have been filed as provided in the notice and which shall be disputed by the corporation may be submitted for determination to the court, if any, supervising the liquidation of the corporation. If no court is supervising the liquidation of the corporation, claims may be submitted to any court of competent jurisdiction.

(2) A claim filed by the trustee or paying agent for the holders of bonds or coupons shall have the same effect as if filed by the holder of any such bond or coupon.

(3) Any person whose claim is, at the date of the first publication of notice, barred by any statute of limitations is not a creditor or claimant entitled to any notice under this section or § 4-26-1106.

(4) The claim of any such person and all other claims which are not filed in a timely manner as provided in the notice except claims which are the subject of litigation on the date of the first publication of the notice, and all claims which are so filed but are disallowed by the court, shall be forever barred as against the corporation, its assets, directors, officers, and shareholders, except to such extent as the court, if any, supervising the liquidation of the corporation or any other court of competent jurisdiction may allow them against any remaining assets of the corporation in the case of a creditor who shows satisfactory reason for his failure to file his claim as so provided.

(5) If the court supervising the liquidation requires a further notice under § 4-26-1106, any reference to a notice in this section, to the extent that the court so orders, shall mean such further notice, except that a claim which has been filed in accordance with a notice under this section need not be refiled under such further notice.

(c) Notwithstanding this section and § 4-26-1106, tax claims and other claims of this state and of the United States shall not be required to be filed under those sections, and those claims shall not be barred because not so filed, and distribution of the assets of the corporation, or

any part thereof, may be deferred until determination of any of these claims.

(d) Laborer's wages shall be preferred claims and entitled to payment before any other creditors out of the assets of the corporation in excess of valid prior liens or encumbrances.

History. Acts 1965, No. 576, § 87;
A.S.A. 1947, § 64-905.

CASE NOTES

Cited: Putnam Realty, Inc. v. Terminal Moving & Storage Co., 631 F.2d 547 (8th Cir. 1980).

4-26-1106. Jurisdiction of court to supervise liquidation.

(a) At any time after dissolution of a corporation, the circuit court, upon the petition of the corporation or, in a situation approved by the court, upon the petition of a creditor, claimant, director, officer, shareholder, subscriber for shares, incorporator, or the Attorney General, provided it makes an affirmative finding, if the petition is contested, that the corporate assets are being, or are about to be, misapplied or wasted and that the creditors or shareholders are threatened with irreparable damage, may supervise generally the liquidation of the corporation and make all such orders as it may deem proper in all matters in connection with the winding up of the affairs of the corporation and, without limiting the generality thereof, in respect to the following:

(1) The adequacy of the notice, if any, given to creditors and claimants; and if the court finds inadequate notice was given, it may require such additional notice as to the court may seem proper; or if no notice has been given, the court shall require the publication of a notice for three (3) consecutive weeks warning creditors and claimants to file their claims with the court within one hundred twenty (120) days following the first publication or else be barred;

(2) The determination of the validity and amount or invalidity of any claims which have been presented or may be presented to the corporation or to the court or its receiver;

(3) The barring of all creditors and claimants who have not filed claims in a timely manner as provided in any such notice or whose claims have been disallowed by the court, as against the corporation, its assets, directors, and shareholders;

(4) The determination and enforcement of the liability of any director, officer, shareholder, or subscriber for shares to the corporation or for the liabilities of the corporation;

(5) The payment, satisfaction, or compromise of claims against the corporation, the retention of assets for such purpose, and the determination of the adequacy of provisions made for the payment of the liabilities of the corporation;

(6) The appointment and removal of a receiver who may be a director, officer, shareholder, or other person; however, some official or substantial stockholder shall be preferred in appointing a receiver unless the court finds there are compelling reasons to the contrary.

(7) The return, where lawful, of subscription payments to subscribers for shares and the making of distributions, in cash or in kind or partly each, to the shareholders;

(8) The disposition or destruction of records, documents, and papers of the corporation;

(9) The issuance of injunctions against unauthorized or unlawful acts on the part of the corporation or its officials, restraining creditors from proceeding against the corporation in any other court, or issuing orders and injunctions for any other purpose which tends to safeguard the rights of the corporation, its shareholders, creditors, or claimants;

(10) Ordering and supervising the public or private sale of any or all assets of the corporation on terms approved by the court, which sale may be made by the corporation under the court's direction or by a receiver or commissioner appointed by the court;

(11) Extending the time, where equitable, for creditors and claimants to file their claims with the court and barring all creditors who have not filed their claims in a timely manner from participating in the distribution of the assets of the corporation.

(b)(1) Orders under this section may be entered *ex parte*, except that the court may require notice to be given to the corporation and also to be given to other interested parties in such manner as the court may deem proper of any hearings and of the entry of any orders.

(2) All orders made by the court under this section shall be binding upon the Attorney General, the corporation, its officers, directors, shareholders, subscribers for shares, incorporators, creditors, and claimants but shall not be binding upon any party who has not received notice of the hearing if the court had directed that notice be given to such party.

(c) If the circuit court acquires jurisdiction to supervise the liquidation of a corporation, its jurisdiction will be exclusive.

(d) The venue of a proceeding under this section will be the county in which the corporation maintained on the date of dissolution its principal place of business or, if it had no such principal place of business, in the county wherein its registered office is located; otherwise the venue shall be Pulaski County.

History. Acts 1965, No. 576, § 88; A.S.A. 1947, § 64-906.

A.C.R.C. Notes. As originally enacted, subsection (c) provided: "If the circuit court acquires jurisdiction to supervise the liquidation of a corporation, its jurisdiction will be exclusive, and the same jurisdiction may not thereafter be exercised by the chancery court of the same county, and vice versa." Amendment 80 to

the Arkansas Constitution was adopted by voter referendum and became effective July 1, 2001. Amendment 80 established circuit courts as the trial courts of original jurisdiction of all justiciable matters not otherwise assigned pursuant to the Constitution and specifically provided that "jurisdiction conferred on Circuit Courts established by this Amendment includes all matters previously cognizable by Cir-

cuit, Chancery, Probate and Juvenile Courts...".

Cross References. Appointment of receivers, ARCP 66.

CASE NOTES

ANALYSIS

Creditors' claims.
Judicial sales.

Creditors' Claims.

Chancery Court was not wholly without jurisdiction to hear complaints by creditors against corporations and stockholders to set aside transfers made to defeat creditors' claims. *Horne Bros. v. Ray Lewis*

Corp., 292 Ark. 477, 731 S.W.2d 190 (1987).

Judicial Sales.

The court is vendor in judicial sales; the court is vested with sound judicial discretion and may confirm or refuse to confirm a sale in the exercise of this discretion. *Keirs v. Mt. Comfort Enters., Inc.*, 266 Ark. 523, 587 S.W.2d 8 (1979).

4-26-1107. Involuntary dissolution.

(a) A corporation may be dissolved involuntarily by a decree of the circuit court of the county in which its principal place of business is located or, if it has no principal place of business, in the county wherein its registered office is situated, otherwise in Pulaski County, in an action filed in the name of the state by the Attorney General when it is established that:

(1) The corporation procured its articles of incorporation through fraud; or

(2) The corporation has continued to exceed or abuse the authority conferred on it by law or has continued to transact business beyond the scope of the purpose expressed in its articles of incorporation; or

(3) The corporation has failed to comply with any of the provisions of this chapter in respect to the designation and maintenance in this state of a registered agent or registered office or in respect to any change of its registered agent or registered office; or

(4) A misrepresentation has been made of any material matter in any application, certificate, affidavit, or other document submitted by the corporation pursuant to this chapter.

(b)(1) If the writ of summons, which shall be returnable in thirty (30) days, issued on the complaint in the action is returned by the sheriff unserved because no registered agent or other person eligible to receive service can be found in his jurisdiction, then upon the filing of the writ of summons with the clerk of the court, bearing the sheriff's return, the clerk shall issue and publish against the defendant corporation, for the time and in the manner prescribed in § 16-58-130, a warning order; and he shall appoint an attorney ad litem pursuant to § 16-65-403(a)(1) [repealed].

(2) The Attorney General shall also cause a copy of the warning order and the complaint to be mailed to the defendant corporation at its registered office as shown on the records of the Secretary of State at least twenty (20) days prior to the trial of such suit or the entry of decree therein; and the certificate of the Attorney General as to the mailing shall be prima facie evidence thereof.

(3) Compliance with the jurisdictional requirements will confer on the court jurisdiction to decree the dissolution of the corporation.

(c) The court will cause certified copies of the decree of dissolution to be filed with the Secretary of State and the county clerk of the county, if other than Pulaski County, in which the corporation's registered office is located. No fee shall be charged by either of the officials for the filing.

History. Acts 1965, No. 576, § 89; A.S.A. 1947, § 64-907.

Cross References. Proceedings to vacate charter, § 16-118-105.

CASE NOTES

Cited: Missouri Pac. R.R. v. W.S. Fox & Sons, 251 Ark. 247, 472 S.W.2d 726 (1971); Putnam Realty, Inc. v. Terminal Moving & Storage Co., 631 F.2d 547 (8th Cir. 1980).

4-26-1108. Jurisdiction of court to liquidate assets and business of corporation.

(a) The circuit court shall have full power to liquidate the assets and business of a corporation:

(1) In an action by a shareholder when it is established:

(A) That the directors are deadlocked in the management of the corporate affairs, and the shareholders are unable to break the deadlock and that irreparable injury to the corporation is being suffered or is threatened by reason thereof; or

(B) That the acts of the directors or those in control of the corporation are illegal, oppressive, or fraudulent; or

(C) That the shareholders are deadlocked in voting power and that irreparable injury to the corporation is being suffered or is threatened by reason thereof; or

(D) That the corporate assets are being misapplied or wasted.

(2) In an action by a creditor:

(A) When the claim of the creditor has been reduced to judgment and an execution thereon returned unsatisfied, and it is established that the corporation is insolvent; or

(B) When the corporation has admitted in writing that the claim of the creditor is due and owing, and it is established that the corporation is insolvent.

(3) When an action has been filed by the Attorney General to dissolve a corporation, and it is established that liquidation of its business and affairs should precede the entry of a decree of dissolution.

(b) It shall not be necessary to make shareholders parties to any such action or proceeding unless relief is sought against them personally.

(c) In such a liquidation proceeding, the court shall have all of the powers which are conferred upon the court under § 4-26-1106, and if the proceeding be pending in the circuit court, the court shall have jurisdiction after liquidation has been completed to enter a decree dissolving the corporation. In this last event the dissolution will be certified to the Secretary of State and the county clerk as provided in § 4-26-1107.

(d) A proceeding under this section shall be filed in the county in which the principal place of business of the corporation is located or, if it has no principal place of business, in the county wherein its registered office is situated; otherwise, it shall be filed in Pulaski County.

History. Acts 1965, No. 576, § 90; A.S.A. 1947, § 64-908.

Publisher's Notes. Acts 1993, No. 444, § 2, provided: "The General Assembly determines that Arkansas Code § 4-25-104 is no longer necessary and should be repealed as to dissolution of insolvent corpo-

rations is now comprehensively covered by Arkansas Code §§ 4-26-1108, 4-27-1430, and 4-59-201 et seq."

Cross References. Jurisdiction of circuit courts, Ark. Const. Amend. 80, §§ 6, 19.

CASE NOTES

ANALYSIS

Bankruptcy court.
Judicial sales.
Mismanagement.
Oppressive acts.

Bankruptcy Court.

Because the trustee's action to liquidate a close corporation in order to realize the value of the estate's shares under subdivision (a)(1)(B) was related to the underlying bankruptcy, the bankruptcy court had jurisdiction over the claim. *Luker v. Reeves*, 65 F.3d 670 (8th Cir. 1995).

Judicial Sales.

The court is the vendor in judicial sales; the court is vested with sound judicial discretion and may confirm or refuse to confirm a sale in the exercise of this discretion. *Keirs v. Mt. Comfort Enters., Inc.*, 266 Ark. 523, 587 S.W.2d 8 (1979).

Mismanagement.

Chancery had jurisdiction to dissolve a corporation and order a sale of its assets where the president and majority stockholder was not managing the corporation for the benefit of the other stockholders but was merely using the corporation for his own private purposes. *Red Bud Realty Co. v. South*, 153 Ark. 380, 241 S.W. 21 (1922) (decision under prior law).

Oppressive Acts.

Disappointment in a corporate arrangement does not constitute "oppression" as that term is used in subdivision (a)(1)(B) of this section. *Smith v. Paul*, 317 Ark. 182, 876 S.W.2d 266 (1994).

Cited: *Missouri Pac. R.R. v. W.S. Fox & Sons*, 251 Ark. 247, 472 S.W.2d 726 (1971).

4-26-1109. Deposit with Treasurer of State of amount due certain creditors or shareholders.

Upon the liquidation of a corporation, whether before or after dissolution, the portion of the assets distributable to a creditor or shareholder who is unknown or cannot be found or who is under disability, and there is no person legally competent to receive such distributive portion, shall be reduced to cash and deposited with the Treasurer of State and shall be paid over to the creditor or shareholder or to his legal representative upon proof satisfactory to the Treasurer of State of his right thereto.

History. Acts 1965, No. 576, § 91; A.S.A. 1947, § 64-909.

SUBCHAPTER 12 — FILING AND FEES

SECTION.

4-26-1201. Filing of corporate documents.

4-26-1202. Fees — Secretary of State

[Fee schedule superseded

by § 4-27-1705 effective

SECTION.

midnight December 31,
1987.]

4-26-1203. Fees — County clerk.

4-26-1204. Fees of mutual corporations.

Cross References. Corporate franchise tax, § 26-54-101 et seq.

Fees charged corporations, § 4-27-122.

Income tax, §§ 26-51-205, 26-51-412, 26-51-804.

Effective Dates. Acts 1911, No. 87, § 16: approved Mar. 8, 1911. Emergency clause provided: "This Act shall not be deemed a repeal of any law now in force

regulating corporations, or the payment of fees and taxes by corporations, except that Act 294, approved May 31, 1909, is hereby repealed. This law being necessary for the immediate preservation of the public peace, health and safety shall be in force from and after its passage."

Acts 1965, No. 576, § 98: effective at midnight on Dec. 31, 1965.

4-26-1201. Filing of corporate documents.

(a) When any provision of this chapter requires that a corporate document of any character "be executed and filed in accordance with § 4-26-1201," or "filed in accordance with § 4-26-1201," the execution or filing of that document and the legal effect thereof shall be controlled by the following provisions:

(1) The document shall be executed in duplicate, and, if the document consists of the original articles of incorporation, it shall be signed by all of the incorporators; but every other document executed on behalf of a corporation, unless otherwise provided in this chapter, shall be signed by the president or a vice-president of the corporation and by its secretary or an assistant secretary;

(2) Except where specifically required under some provision of this chapter, the execution of the document need not be acknowledged before an officer authorized to take oaths;

(3) The document so executed in duplicate shall be delivered to the Secretary of State. If he finds that it conforms to law and that in respect to the corporate name no violation of §§ 4-26-401 — 4-26-403 is indicated and that the document is tendered to effect a lawful purpose and is entitled to be filed, then upon the payment of the fees required under this chapter, he shall endorse upon each of the duplicates tendered for filing, over his signature and official seal, the word "Filed" followed by the date of the filing;

(4) The Secretary of State shall retain in his files one (1) executed copy of the document, the ribbon copy if the document is typewritten; and he shall attach to the other filed copy a certificate stating that the instrument is an executed counterpart of a document filed in his office, giving date of the filing, and return the other copy to the corporation or its representative;

(5) If the registered office of the corporation be situated in any county other than Pulaski County, the executed counterpart of the document filed with the Secretary of State, with his certificate annexed thereto, shall be filed, within sixty (60) days after the date of its filing with the Secretary of State, for record in the office of the county clerk of the county wherein the corporation's registered office is located. After recording the document, the county clerk shall return it to the corporation. In case of a consolidation or a merger, a counterpart of the articles of consolidation or merger with the annexed certificate of the Secretary of State shall be filed for record with the county clerk of the county, other than Pulaski County, wherein the registered office of the new corporation, the surviving corporation, and each constituent corporation is located.

(b)(1) Upon the filing with the Secretary of State of the original articles of incorporation, corporate existence shall begin. Neither the corporate existence nor the right to do business as a corporation shall be postponed until a duplicate of the articles is filed with the county clerk, nor shall the shareholders incur any personal liability by reason of authorizing the corporation to do business as an incorporated entity prior to the filing with the county clerk.

(2) In like manner, and except in the instances where this chapter may specifically provide to the contrary, any other corporate document filed as prescribed in this section shall be completely effective when filed in the office of the Secretary of State, and the corporate act to be effected thereby shall be deemed completely consummated upon the filing with the Secretary of State.

(3) However, in each instance where there shall be a failure to file with the county clerk in the time and manner required by this chapter, the corporation or the surviving corporation, in case of a merger or consolidation, may be subjected to a penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) to be enforced through a civil proceeding filed in the name of the state by the Attorney General in the Circuit Court of Pulaski County, and, in case of a willful refusal to make the county filing, the Attorney General may sue to cancel or revoke the articles of incorporation of the corporation.

(c) A duplicate of the articles of incorporation filed with the Secretary of State as provided in subdivision (a)(3) of this section and carrying his filing endorsement, or a copy of such articles certified by the Secretary of State to be a true copy of articles filed in his office with his certificate, also showing the date of filing, or the record of the articles in the office of the county clerk or a copy of the record certified by the county clerk, when introduced in evidence shall be conclusive proof that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this chapter, except as against the state in a direct proceeding to cancel or revoke the articles of incorporation or as against the plaintiff in a suit under § 4-26-406.

(d) In like manner, a duplicate carrying the filing endorsement of the Secretary of State of any other document filed with the Secretary of State pursuant to this section, or a copy of the document certified by the Secretary of State as provided in subsection (c) of this section, when introduced in evidence shall constitute prima facie proof of the facts therein recited and shall constitute prima facie evidence that the corporate purpose sought to be effected by the filing has been lawfully accomplished.

(e) Where a filing under any section of this chapter is required to be made in the county in which a corporation maintains a registered office, the word "county," as applied to counties having two (2) judicial districts, shall mean the district in which such registered office is maintained.

(f) In any civil action filed by or against a corporation, it shall not be necessary to prove in the trial of the cause the existence of the corporation in its corporate capacity unless the defendant in his or its answer expressly avers under oath that the organization suing or being sued as a corporation does not in fact have a lawful corporate existence.

History. Acts 1965, No. 576, § 15; A.S.A. 1947, § 64-117.

CASE NOTES

ANALYSIS

Articles of incorporation.
Evidence.
Failure to file.

Articles of Incorporation.

Filing of articles of agreement by partners organizing corporation was not notice of the dissolution of the partnership. *Herring v. Mishawaka Rubber & Woolen Mfg. Co.*, 192 Ark. 1055, 95 S.W.2d 1141 (1936) (decision under prior law).

In order to become a corporation de jure the articles of incorporation must be filed with both the Secretary of State and the county clerk of the county in which the corporation's principal office or place of business is located, and failure to do so renders the proposed corporation a de facto corporation. *Gazette Publishing Co. v. Brady*, 204 Ark. 396, 162 S.W.2d 494 (1942) (decision under prior law).

Stockholders in corporation were individually liable as partners for debt where copy of articles of incorporation was not recorded with county clerk until date of trial, even though articles were filed with Secretary of State prior to date of debt. *Whitaker v. Mitchell Mfg. Co.*, 219 Ark.

779, 244 S.W.2d 965 (1952) (decision under prior law).

Theory that in absence of filing of articles of incorporation of the corporation in the county, it did not have corporate status was completely contrary to subsection (b) of this section. *Smith v. Estes*, 259 Ark. 337, 533 S.W.2d 190 (1976).

Evidence.

Original charter is primary evidence and competent proof even though a certified copy could be admitted. *Sturdivant v. Ka-Dene Medicine Co.*, 169 Ark. 535, 275 S.W. 921 (1925) (decision under prior law).

Since the validity of the certificate from the Secretary of State which stated that plaintiff was a corporation in good standing at all times pertinent to the action was uncontroverted except for plaintiff's failure to file a change of address as to its registered office or agent, and since defendants demonstrated no prejudice as a result of the change of address, certificate was sufficient to prove the corporation's legal existence and thus plaintiff had the legal capacity to sue. *Delta Oil Co. v. Catalani*, 276 Ark. 66, 633 S.W.2d 1 (1982).

Failure to File.

Where the committee failed to file its articles of incorporation with the Secretary of State and it elected to initiate a lawsuit as a corporation, the trial court correctly dismissed the complaint because a corporation not in existence could not initiate a lawsuit; the trial court was not required to allow the committee to pro-

ceed as a partnership or de facto corporation. *Committee for Util. Trimming, Inc. v. Hamilton*, 290 Ark. 283, 718 S.W.2d 933 (1986).

Cited: *Missouri P.R.R. v. W.S. Fox & Sons*, 251 Ark. 247, 472 S.W.2d 726 (1971); *Franklin Elec. Co. v. Heath*, 261 Ark. 269, 547 S.W.2d 755 (1977).

4-26-1202. Fees — Secretary of State [Fee schedule superseded by § 4-27-1705 effective midnight December 31, 1987.]

The fees chargeable by the Secretary of State for services under this chapter shall be:

(1) For filing original articles of incorporation, including issuance of certificate showing such filing:

(A) **PAR STOCK.** The fee shall be based on the aggregate par value of the total number of shares authorized to be issued as follows:

From \$1.00 to \$100,000	\$15.00
From \$100,001 to \$1,000,000, for each \$10,000 par value or fractional part thereof	1.00
\$1,000,001 to \$10,000,000, for each \$20,000 par value or fractional part thereof	1.00
In excess of \$10,000,000, for each \$40,000 par value or fractional part thereof	1.00

In no case shall the fee be less than fifteen dollars (\$15.00), and all fees shall be computed to the nearest dollar.

(B) **NONPAR STOCK.** The fee shall be based on the number of shares authorized to be issued as follows:

From one (1) share to 2,000 shares	\$15.00
From 2,001 shares to 10,000 shares, for each 1,000 shares or fractional part thereof	5.00
10,001 shares to 100,000 shares, for each 1,000 shares or fractional part thereof	2.50
In excess of 100,000 shares, for each 1,000 shares or fractional part thereof	1.00

In no case shall the minimum fee be less than fifteen dollars (\$15.00), and all fees shall be computed to the nearest dollar.

(C) **BOTH PAR STOCK AND NONPAR STOCK.** If both par stock and nonpar stock are authorized under the articles, the foregoing computations shall be applied to each class of stock, and the total figure resulting from the separate computations shall represent the fee; the minimum fee for the filing is to be fifteen dollars (\$15.00).

(2) For filing articles of amendment, including issuance of certificate showing such filing:

(A) If the amendment increases the number of authorized shares, compute the fee on the capitalization authorized under the articles of

incorporation as amended and credit this fee with the amount chargeable on the capitalization which was authorized prior to the amendment; the fee, however, is never to be less than fifteen dollars (\$15.00).

(B) In all other cases, the fee for filing articles of amendment shall be fifteen dollars (\$15.00).

(3) For filing articles of merger or consolidation, including issuance of certificate showing such filing, the fee shall be twenty-five dollars (\$25.00) unless the capitalization of the surviving or new corporation exceeds two hundred fifty thousand (250,000) shares, in which last event the fee shall be fifty dollars (\$50.00).

(4) For filing a resignation of registered agent, a change of registered agent or a change of registered office, three dollars (\$3.00).

(5) For filing a change of address of registered office by a registered agent representing one (1) or more corporations, three dollars (\$3.00) for each corporation; provided that the maximum fee shall be two hundred dollars (\$200).

(6) For filing application for right to do business under fictitious name, ten dollars (\$10.00).

(7) For any other filing under this chapter, with annexed certificate, five dollars (\$5.00).

(8) For any certificate pursuant to § 4-26-106 or § 4-26-207 or any other certificate not provided for in this section, five dollars (\$5.00).

(9) For furnishing a certified copy of any document, fifty cents (50¢) per page and one dollar (\$1.00) for the certificate thereto.

(10) For receiving service of process on behalf of a corporation, five dollars (\$5.00), which may be recovered as taxable costs by the party causing service to be made if such party prevails in this litigation.

History. Acts 1965^{*}, No. 576, § 96; 1973, No. 379, § 2; A.S.A. 1947, § 64-1001; Acts 1987, No. 1068, § 1. midnight, December 31, 1987, pursuant to § 5 of that act.

A.C.R.C. Notes. This section was amended by Acts 1987, No. 1068, § 1. However, such amendment expired at The schedule of fees chargeable by the Secretary of State for services under § 4-26-101 et seq. is codified at § 4-27-1705.

4-26-1203. Fees — County clerk.

The fees of the county clerk for services under this chapter shall be:

(1) For filing articles of incorporation, articles of amendment, or any other document he is required to file under this chapter, twenty-five dollars (\$25.00);

(2) For recording any document he is required to record hereunder, one dollar (\$1.00) per page for the first three (3) pages of the manuscript filed for record and fifty cents (50¢) for each additional page. The Secretary of State's certificate shall be considered as one (1) page; the fee for a partial page shall be the same as the fee for a full page;

(3) For every certificate, fifty cents (50¢)

(4) For indexing each record or file, ten cents (10¢)

(5) For any services under this chapter not covered by this section, the clerk's fees shall be governed by the then-applicable scale fixed by law for his office.

History. Acts 1965, No. 576, § 97;
A.S.A. 1947, § 64-1002.

4-26-1204. Fees of mutual corporations.

Excepting insurance companies, all mutual corporations, foreign or domestic, having no capital stock, seeking to do business in this state, shall pay to the Treasurer of State for the filing of its articles of incorporation a fee of five hundred dollars (\$500). However, nothing in this section shall apply to fraternal orders that write insurance or to any mutual corporation created for religious, literary, benevolent, or scientific purposes or any such mutual corporation formed for the advancement or betterment of agricultural purposes.

History. Acts 1911, No. 87, § 10; C. & M. Dig., § 1811; A.S.A. 1947, § 64-1003.

CHAPTER 27

BUSINESS CORPORATION ACT OF 1987

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. INCORPORATION.
3. PURPOSES AND POWERS.
4. NAMES.
5. OFFICE AND AGENT.
6. SHARES AND DISTRIBUTIONS.
7. SHAREHOLDERS.
8. DIRECTORS — OFFICERS — MEETINGS —
STANDARDS OF CONDUCT — INDEMNIFICATION.
9. [RESERVED.]
10. AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS.
11. MERGER AND SHARE EXCHANGE.
12. SALE OF ASSETS.
13. DISSENTERS' RIGHTS.
14. DISSOLUTION.
15. FOREIGN CORPORATIONS.
16. RECORDS AND REPORTS.
17. TRANSITION PROVISIONS.

Publisher's Notes. Former chapter 27, concerning foreign corporations, was repealed by Acts 1987, No. 958, § 64-1705. Former § 4-27-107 was also amended by Acts 1987, No. 1068, § 2. However, such amendment expired at midnight, Dec. 31, 1987. The former chapter was derived from the following sources:

4-27-101. Acts 1973, No. 379, § 4;
A.S.A. 1947, § 64-1223.

4-27-102. Acts 1973, No. 379, § 4;
A.S.A. 1947, § 64-1223.

4-27-103. Acts 1973, No. 379, § 5;
A.S.A. 1947, § 64-1224.

4-27-104. Acts 1907, No. 313, §§ 1, 2;
1919, No. 687, § 1 (par. 1); C. & M. Dig.,

§§ 1826, 1827, 1832; Pope's Dig., §§ 2247, 2248, 2251; Acts 1973, No. 379, § 3; A.S.A. 1947, §§ 64-1201, 64-1202.

4-27-105. Acts 1947, No. 131, §§ 1-5; A.S.A. 1947, §§ 64-1205 — 64-1209.

4-27-106. Acts 1911, No. 87, §§ 3, 14; C. & M. Dig., §§ 1804, 1815; Acts 1977, No. 475, § 1; A.S.A. 1947, §§ 64-1203, 64-1204.

4-27-107. Acts 1939, No. 187, § 1; 1947, No. 214, § 2; 1977, No. 475, § 2; A.S.A. 1947, § 64-1210; Acts 1987, No. 1068, § 2.

4-27-108. Acts 1967, No. 263, § 1; A.S.A. 1947, § 64-1216.

4-27-109. Acts 1967, No. 115, §§ 1-5; A.S.A. 1947, §§ 64-1211 — 64-1215.

4-27-201. Acts 1979, No. 118, § 6; A.S.A. 1947, § 64-1218.6.

4-27-202. Acts 1979, No. 118, § 4; A.S.A. 1947, § 64-1218.4.

4-27-203. Acts 1979, No. 118, § 1; A.S.A. 1947, § 64-1218.1.

4-27-204. Acts 1979, No. 118, § 3; A.S.A. 1947, § 64-1218.3.

4-27-205. Acts 1979, No. 118, § 2; A.S.A. 1947, § 64-1218.2.

4-27-206. Acts 1979, No. 118, § 5; A.S.A. 1947, § 64-1218.5.

4-27-301. Acts 1969, No. 336, §§ 3, 6; A.S.A. 1947, §§ 64-1219, 64-1222.

4-27-302. Acts 1969, No. 336, § 1; A.S.A. 1947, § 64-1217.

4-27-303. Acts 1969, No. 336, § 2; A.S.A. 1947, § 64-1218.

4-27-304. Acts 1969, No. 336, § 5; A.S.A. 1947, § 64-1221.

4-27-305. Acts 1969, No. 336, § 4; A.S.A. 1947, § 64-1220.

This chapter applies to all business corporations incorporated after midnight, December 31, 1987, and to preexisting corporations which elect to be covered by this chapter. See § 4-27-1701.

For Commentary regarding the Business Corporation Act of 1987, see Commentaries Volume A.

Cross References. Business corporations generally, § 4-26-101 et seq.

Change of state of incorporation, § 4-25-109.

RESEARCH REFERENCES

Ark. L. Notes. Matthews, A Statutory Primer: The Arkansas Business Corporation Act of 1987, 1987 Ark. L. Notes 81.

Ark. L. Rev. Rosenzweig, Protecting the Rights of Minority Shareholders in Close Corporations Under the New Arkansas Business Corporation Act, 44 Ark. L. Rev. 1.

UALR L.J. Brewer, An Overview of the 1987 Arkansas Business Corporation Act, 10 UALR L.J. 431.

Survey—Corporations, 10 UALR L.J. 549.

Note, Director-Exculpation Clauses Under the Arkansas Business Corporation Act of 1987, 15 UALR L.J. 337.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

Part A: Short Title and Reservation of Power

4-27-101. Short title.

4-27-102. Reservation of power to amend or repeal.

4-27-103 — 4-27-119. [Reserved.]

Part B: Filing Documents

4-27-120. Filing requirements.

4-27-121. Forms.

4-27-122. Filing, service, and copying fees.

4-27-123. Effective time and date of document.

SECTION.

4-27-124. Correcting filed document.

4-27-125. Filing duty of Secretary of State.

4-27-126. Appeal from Secretary of State's refusal to file document.

4-27-127. Evidentiary effect of copy of filed document.

4-27-128. Certificate of existence.

4-27-129. Penalty for signing false document.

Part C: Secretary of State

4-27-130. Powers.

SECTION.

4-27-131 — 4-27-139. [Reserved.]

Part D: Definitions

4-27-140. Definitions.

SECTION.

4-27-141. Notice.

4-27-142. Number of shareholders.

Effective Dates. Acts 1989, No. 583, § 8: Mar. 15, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that present law has no provisions for registered investment companies; that such laws are needed to properly govern investment companies and to clarify the status of investment companies; and that adoption of Subchapter M of the Internal Revenue Code of 1986 is necessary to provide uniform tax laws on both the State and Federal levels for investment companies. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of public peace, health, and safety shall be in full force and effect from and after its passage and approval."

A.C.R.C. Notes. Acts 2001, No. 454, § 1, provided: "(a)(1) Any business corporation may change its state of incorporation from this state to any other jurisdiction which authorizes this change. (2) Any foreign corporation may change its jurisdiction of incorporation to this state from any other jurisdiction which authorizes this change."

"(b)(1) This change may be made by a business corporation: (A) Only pursuant to authorization by a majority of the voting power present, or by a larger vote as the articles may require; (B) At an annual or special meeting of shareholders; and (C) If the notice sets forth the consideration of this action as the purpose of the meeting. (2)(A) There shall be filed with the Secretary of State a certificate as to the authorization by the shareholders, signed by the president or vice president and the secretary and acknowledged by the president or vice president. (B) The certificate may be delivered to the Secretary of State for filing as of any specified date within thirty (30) days after the date of delivery. (3) When all taxes, fees, and charges have been paid as required by law, the Secretary of State shall record the certificate in the Secretary of State's office and issue to the corporation a certificate

reciting that it has taken all action required under the laws of this state to change its state of incorporation to the other jurisdiction. (4) The corporation shall, upon complying with the laws of the new jurisdiction, no longer be under the laws of this state. (5) Certified copies of the certificate of incorporation or other official certificate evidencing the corporation's incorporation under the laws of the other jurisdiction shall be filed with the Secretary of State within thirty (30) days of receipt by the business corporation."

"(c)(1) The change may be made by a foreign corporation by filing with the Secretary of State: (A) A certified copy of its original or restated articles and all amendments subsequent to the latest restatement, which were filed in the other jurisdiction; (B) The original of a Certificate of Good Standing from the state of original jurisdiction, dated not more than thirty (30) days earlier than the date of filing in this state; (C) An application for incorporation pursuant to this act, signed by the corporation, by its president or vice president, and its secretary or assistant secretary, and acknowledged by one of the signing officers, setting forth the requirements of Arkansas Code 4-27-202; (D) A franchise tax contact sheet provided by the Secretary of State; and (E) A certificate by the Secretary of State or other proper officer of the jurisdiction in which the corporation is incorporated, reciting that the corporation has taken all action required under the laws of the jurisdiction to become a corporation incorporated under the laws of this state. (2)(A) These documents may be delivered to the Secretary of State for filing as of any specified date within thirty (30) days after the date of delivery. (B) When all fees and charges have been paid as required by law, the Secretary of State shall record the documents in the Secretary of State's office and issue a certificate of incorporation of the corporation under the laws of this state. (3) The certificate of incorporation shall be conclusive evidence of the fact that the

corporation has been duly incorporated under the laws of this state. (4) Effective as of the time of filing the documents with the Secretary of State, the corporation shall be incorporated solely under the laws of this state and no longer under the laws of the other jurisdiction.”

RESEARCH REFERENCES

UALR L.J. Mathews, Corporate Stat-
utes—Which One Applies?, 13 UALR L.J.
69.

Part A: Short Title and Reservation of Power

4-27-101. Short title.

This chapter shall be known and may be cited as the “Arkansas Business Corporation Act.”

History. Acts 1987, No. 958, § 64-101.

CASE NOTES

Cited: Centennial Valley Ranch Mgt., Rice (In re Cheqnet Sys.), 246 Bankr. 873
Inc. v. Agri-Tech Ltd. Partnership, 38 Ark. (Bankr. E.D. Ark. 2000).
App. 177, 832 S.W.2d 259 (1992); Terry v.

4-27-102. Reservation of power to amend or repeal.

The General Assembly has power to amend or repeal all or part of this chapter at any time and all domestic and foreign corporations subject to this chapter are governed by the amendment or repeal.

History. Acts 1987, No. 958, § 64-102.

4-27-103 — 4-27-119. [Reserved.]

Part B: Filing Documents

4-27-120. Filing requirements.

- (a) A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing by the Secretary of State.
- (b) This chapter must require or permit filing the document in the office of the Secretary of State.
- (c) The document must contain the information required by this chapter. It may contain other information as well.
- (d) The document must be typewritten or printed.
- (e) The document must be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corpora-

tions need not be in English if accompanied by a reasonably authenticated English translation.

(f) The document must be executed:

(1) by the chairman of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

(2) if directors have not been selected or the corporation has not been formed, by an incorporator; or

(3) if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(g) The person executing the document shall sign it and state beneath or opposite his signature his name and the capacity in which he signs. The document may but need not contain: (1) the corporate seal, (2) an attestation by the secretary or an assistant secretary, (3) an acknowledgement, verification, or proof.

(h) If the Secretary of State has prescribed a mandatory form for the document under § 4-27-121, the document must be in or on the prescribed form.

(i) The document must be delivered to the office of the Secretary of State for filing and must be accompanied by one (1) exact or conformed copy (except as provided in §§ 4-27-503 and 4-27-1509), the correct filing fee, and any franchise tax, license fee, or penalty required by this chapter or other law.

History. Acts 1987, No. 958, § 64-103.

4-27-121. Forms.

(a) The Secretary of State may prescribe and furnish on request forms for: (1) an application for a certificate of existence, (2) a foreign corporation's application for a certificate of authority to transact business in this state, (3) a foreign corporation's application for a certificate of withdrawal, and (4) the annual franchise tax report. If the Secretary of State so requires, use of these forms is mandatory.

(b) The Secretary of State may prescribe and furnish on request forms for other documents required or permitted to be filed by this chapter but their use is not mandatory.

History. Acts 1987, No. 958, § 64-104.

4-27-122. Filing, service, and copying fees.

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to him for filing:

DOCUMENT	FEE
(1) Articles of incorporation	\$ 50.00
(2) Application for use of indistinguishable name	No fee
(3) Application for reserved name	25.00
(4) Notice of transfer of reserved name	25.00
(5) Application for registered name	50.00

(6) Application for renewal of registered name	25.00
(7) Corporation's statement of change of registered agent or registered office or both	25.00
(8) Agent's statement of change of registered office for each affected corporation not to exceed a total of	125.00
(9) Agent's statement of resignation	No fee
(10) Amendment of articles of incorporation	50.00
(11) Restatement of articles of incorporation with amend- ment of articles	100.00
(12) Articles of merger or share exchange	100.00
(13) Articles of dissolution	50.00
(14) Articles of revocation of dissolution	150.00
(15) Certificate of administrative dissolution	No fee
(16) Application for reinstatement following administrative dissolution	50.00
(17) Certificate of reinstatement	No fee
(18) Certificate of judicial dissolution	No fee
(19) Application for certificate of authority	300.00
(20) Application for amended certificate of authority	300.00
(21) Application for certificate of withdrawal	300.00
(22) Certificate of revocation of authority to transact business	No fee
(23) Articles of correction	30.00
(24) Application for certificate of existence or authorization	15.00
(25) Application of domestic corporation to change domicile	50.00
(26) Application of foreign corporation to move domicile to Arkansas	300.00
(27) Any other document required or permitted to be filed by this chapter	25.00

(b) The Secretary of State shall collect a fee of twenty-five dollars (\$25.00) each time process is served on him under this chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if he prevails in the proceeding.

(c) The Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

- (1) Fifty cents (50¢) a page for copying; and
- (2) Five dollars (\$5.00) for the certificate.

(d) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to him or her by electronic means:

DOCUMENT	FEE	PROCESSING FEE
(1) Articles of incorporation	\$ 40.00\$ 5.00
(2) Application for reservation of corporate name . .	\$ 18.50\$ 4.00
(3) Certificate of amendment (new code-no shares exchanged)	\$ 40.00\$ 5.00
(4) Notice of transfer of reserved name	\$ 18.50\$ 4.00

- (5) Certificate of amendment (new code-shares exchanged) \$ 80.00\$10.00
- (6) Certificate of amendment \$ 40.00\$ 5.00
- (7) Notice of change of registered office or agent or both \$ 18.50\$ 4.00
- (8) Application for registration of fictitious name (old code) \$ 18.50\$ 4.00
- (9) Application for fictitious name for domestic corporation \$ 18.50\$ 4.00
- (10) Application for certificate of authority \$258.00\$12.00
- (11) For any other document not listed above, the cost for electronic filing is:
 - (A) \$4 for processing fee when filing fee is \$0 to \$50;
 - (B) \$5 for processing fee when filing fee is \$51 to \$99;
 - (C) \$10 for processing fee when filing fee is \$100 to \$299; and
 - (D) \$12 for processing fee when filing fee is \$300 or more.

History. Acts 1987, No. 958, § 64-105; 1987 (1st Ex. Sess.), No. 11, § 1; 2001, No. 1395, § 1.

Amendments. The 2001 amendment, in A, added (25) and (26) and redesignated former (25) as present (27); and added D.

4-27-123. Effective time and date of document.

- (a) Except as provided in subsection (b) of this section and § 4-27-124(c), a document accepted for filing is effective:
- (1) at the time of filing on the date it is filed, as evidenced by the Secretary of State’s date and time endorsement on the original document; or
 - (2) at the time specified in the document as its effective time on the date it is filed.
- (b) A document may specify a delayed effective time and date, and if it does so, the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document may not be later than the 90th day after the date it is filed.

History. Acts 1987, No. 958, § 64-106.

4-27-124. Correcting filed document.

- (a) A domestic or foreign corporation may correct a document filed by the Secretary of State if the document (1) contains an incorrect statement or (2) was defectively executed, attested, sealed, verified, or acknowledged.
- (b) A document is corrected:
- (1) by preparing articles of correction that
 - (i) describe the document (including its filing date) or attach a copy of it to the articles,

(ii) specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective, and

(iii) correct the incorrect statement or defective execution; and
(2) by delivering the articles to the Secretary of State for filing.

(c) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

History. Acts 1987, No. 958, § 64-107.

4-27-125. Filing duty of Secretary of State.

(a) If a document delivered to the office of the Secretary of State for filing satisfies the requirements of § 4-27-120, the Secretary of State shall file it.

(b) The Secretary of State files a document by stamping or otherwise endorsing "Filed," together with his name and official title and the date and time of receipt, on both the original and the document copy and on the receipt for the filing fee. After filing a document, except as provided in §§ 4-27-503 and 4-27-1510, the Secretary of State shall deliver the document copy, with the filing fee receipt (or acknowledgement of receipt if no fee is required) attached, to the domestic or foreign corporation or its representative.

(c) If the Secretary of State refuses to file a document, he shall return it to the domestic or foreign corporation or its representative within five (5) days after the document was delivered, together with a brief, written explanation of the reason for his refusal.

(d) The Secretary of State's duty to file documents under this section is ministerial. His filing or refusing to file a document does not:

1. affect the validity or invalidity of the document in whole or in part;
2. relate to the correctness or incorrectness of information contained in the document;
3. create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

History. Acts 1987, No. 958, § 64-108.

4-27-126. Appeal from Secretary of State's refusal to file document.

(a) If the Secretary of State refuses to file a document delivered to his office for filing, the domestic or foreign corporation may appeal the refusal within thirty (30) days after the return of the document to the Pulaski County Circuit Court. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the Secretary of State's explanation of his refusal to file.

(b) The court may summarily order the Secretary of State to file the document or take other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

History. Acts 1987, No. 958, § 64-109.

4-27-127. Evidentiary effect of copy of filed document.

A certificate attached to a copy of a document filed by the Secretary of State, bearing his signature (which may be in facsimile) and the seal of this state, is conclusive evidence that the original document is on file with the Secretary of State.

History. Acts 1987, No. 958, § 64-110.

4-27-128. Certificate of existence.

(a) Anyone may apply to the Secretary of State to furnish a certificate of existence for a domestic corporation or a certificate of authorization for a foreign corporation.

(b) A certificate of existence or authorization sets forth:

(1) the domestic corporation's corporate name or the foreign corporation's corporate name used in this state;

(2) that

(i) the domestic corporation is duly incorporated under the laws of this state, the date of its incorporation, and the period of its duration if less than perpetual; or

(ii) that the foreign corporation is authorized to transact business in this state;

(3) that all fees, taxes, and penalties owed to this state have been paid, if

(i) payment is reflected in the records of the Secretary of State and

(ii) nonpayment affects the existence or authorization of the domestic or foreign corporation;

(4) that its most recent annual franchise tax report required by § 4-27-1622 has been delivered to the Secretary of State;

(5) that articles of dissolution have not been filed; and

(6) other facts of record in the office of the Secretary of State that may be requested by the applicant.

(c) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the Secretary of State may be relied upon as conclusive evidence that the domestic or foreign corporation is in existence or is authorized to transact business in this state.

History. Acts 1987, No. 958, § 64-111.

4-27-129. Penalty for signing false document.

(a) A person commits an offense if he signs a document he knows is false in any material respect with intent that the document be delivered to the Secretary of State for filing.

(b) An offense under this section is a Class C misdemeanor.

History. Acts 1987, No. 958, § 64-112.

Part C: Secretary of State

4-27-130. Powers.

The Secretary of State has the power reasonably necessary to perform the duties required of him by this chapter.

History. Acts 1987, No. 958, § 64-113.

4-27-131 — 4-27-139. [Reserved.]

Part D: Definitions

4-27-140. Definitions.

In this chapter:

(1) “Articles of incorporation” include amended and restated articles of incorporation and articles of merger.

(2) “Authorized shares” means the shares of all classes a domestic or foreign corporation is authorized to issue.

(3) “Conspicuous” means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlined, is conspicuous.

(4) “Corporation” or “domestic corporation” means a corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of this chapter.

(5) “Deliver” includes mail.

(6) “Distribution” means a direct or indirect transfer of money or other property (except its own shares) or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or otherwise.

(7) “Effective date of notice” is defined in § 4-27-141.

(8) “Employee” includes an officer but not a director. A director may accept duties that make him also an employee.

(9) “Entity” includes corporation and foreign corporation; not-for-profit corporation; profit and not-for-profit unincorporated association; business trust, estate, partnership, trust, and two (2) or more persons having a joint or common economic interest; and state, United States, and foreign government.

(10) “Foreign corporation” means a corporation for profit incorporated under a law other than the law of this state.

(11) “Governmental subdivision” includes authority, county, district, and municipality.

(12) “Includes” denotes a partial definition.

(13) "Individual" includes the estate of an incompetent or deceased individual.

(14) "Means" denotes an exhaustive definition.

(15) "Notice" is defined in § 4-27-141.

(16) "Person" includes individual and entity.

(17) "Principal office" means the office (in or out of this state) so designated in the annual franchise tax report where the principal executive offices of a domestic or foreign corporation are located.

(18) "Proceeding" includes civil suit and criminal, administrative, and investigatory action.

(19) "Record date" means the date established under § 4-27-601 et seq. or § 4-27-701 et seq. on which a corporation determines the identity of its shareholders and their shareholdings for purposes of this chapter. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

(20) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under § 4-27-840(c) for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

(21) "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

(22) "Shares" means the units into which the proprietary interests in a corporation are divided.

(23) "State", when referring to a part of the United States, includes a state and commonwealth (and their agencies and governmental subdivisions) and a territory and insular possession (and their agencies and governmental subdivisions) of the United States.

(24) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

(25) "United States" includes district, authority, bureau, commission, department, and any other agency of the United States.

(26) "Voting group" means all shares of one (1) or more classes or series that under the articles of incorporation or this chapter are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this chapter to vote generally on the matter are for that purpose a single voting group.

(27) "Investment company" means any corporation registered with the United States Securities and Exchange Commission as an investment company under the Investment Company Act of 1940.

History. Acts 1987, No. 958, § 64-114; 1987 (1st Ex. Sess.), No. 11, § 2; 1989, No. 583, § 1.

U.S. Code. The Investment Company Act of 1940, referred to in this section, is codified as 15 U.S.C. § 80b-1 to 80b-21.

4-27-141. Notice.

(a) Notice under this chapter must be in writing unless oral notice is reasonable under the circumstances.

(b) Notice may be communicated in person; by telephone, telegraph, teletype, or other form of wire or wireless communication; or by mail or private carrier. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published; or by radio, television, or other form of public broadcast communication.

(c) Written notice by a domestic or foreign corporation to its shareholder, if in a comprehensible form, is effective when mailed, if mailed postpaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders.

(d) Written notice to a domestic or foreign corporation (authorized to transact business in this state) may be addressed to its registered agent at its registered office or to the corporation or its secretary at its principal office shown in its most recent annual franchise tax report or, in the case of a foreign corporation that has not yet delivered an annual franchise tax report, in its application for a certificate of authority.

(e) Except as provided in subsection (c) of this section, written notice, if in a comprehensible form, is effective at the earliest of the following:

(1) when received;

(2) five (5) days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed;

(3) on the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(f) Oral notice is effective when communicated if communicated in a comprehensible manner.

(g) If this chapter prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements, not inconsistent with the section or other provisions of this chapter, those requirements govern.

History. Acts 1987, No. 958, § 64-115.

4-27-142. Number of shareholders.

(a) For purposes of this chapter, the following identified as a shareholder in a corporation's current record of shareholders constitutes one (1) shareholder:

(1) three (3) or fewer coowners;

(2) a corporation, partnership, trust, estate, or other entity;

(3) the trustees, guardians, custodians, or other fiduciaries of a single trust, estate, or account.

(b) For purposes of this chapter, shareholdings registered in substantially similar names constitute one (1) shareholder if it is reasonable to believe that the names represent the same person.

History. Acts 1987, No. 958, § 64-116.

SUBCHAPTER 2 — INCORPORATION

SECTION.

4-27-201. Incorporators.

4-27-202. Articles of incorporation.

4-27-203. Incorporation.

4-27-204. Liability for preincorporation transactions.

SECTION.

4-27-205. Organization of corporation.

4-27-206. Bylaws.

4-27-207. Emergency bylaws.

RESEARCH REFERENCES

UALR L.J. Arey, Bank Directors' Duties Under the Common Law of Arkansas, 11 UALR L.J. 629.

Note, Director-Exculpation Clauses Under the Arkansas Business Corporation Act of 1987, 15 UALR L.J. 337.

4-27-201. Incorporators.

One (1) or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the Secretary of State for filing.

History. Acts 1987, No. 958, § 64-201.

4-27-202. Articles of incorporation.

(a) The articles of incorporation must set forth:

(1) a corporate name for the corporation that satisfies the requirements of § 4-27-401;

(2) the number of shares the corporation is authorized to issue and, if such shares are to consist of one (1) class only, the par value of each of such shares, or a statement that all of such shares are without par value; or, if such shares are to be divided into classes, the number of shares of each class, and a statement of the par value of the shares of each such class or that such shares are without par value;

(3) the street address of the corporation's initial registered office and the name of its initial registered agent at that office;

(4) the name and address of each incorporator; and

(5) the primary purpose or purposes for which the corporation is organized, which is provided to the Secretary of State for informational purposes and shall not, unless specifically stated in the articles of incorporation, limit the broad purposes provided in § 4-27-301.

(b) The articles of incorporation may set forth:

(1) the names and addresses of the individuals who are to serve as the initial directors;

(2) provisions not inconsistent with law regarding:

(i) specific limitations on the purpose or purposes for which the corporation is organized;

(ii) managing the business and regulating the affairs of the corporation;

(iii) defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders; and

(iv) the imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions.

(3) a provision eliminating or limiting the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, provided that such provision shall not eliminate or limit the liability of a director:

(i) for any breach of the director's duty of loyalty to the corporation or its stockholders;

(ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;

(iii) under § 4-27-833 of this chapter;

(iv) for any transaction from which the director derived an improper personal benefit; or

(v) for any action, omission, transaction, or breach of a director's duty creating any third-party liability to any person or entity other than the corporation or stockholder.

No such provision shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when such provision becomes effective. All references in this subsection to a director shall also be deemed to refer to a member of the governing body of a corporation which is not authorized to issue capital stock; and

(4) any provision that under this chapter is required or permitted to be set forth in the bylaws.

(c) The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.

History. Acts 1987, No. 958, § 64-202.

4-27-203. Incorporation.

(a) Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed.

(b) The Secretary of State's filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

History. Acts 1987, No. 958, § 64-203.

4-27-204. Liability for preincorporation transactions.

All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under this chapter, are jointly and severally liable for all liabilities created while so acting.

History. Acts 1987, No. 958, § 64-204.

CASE NOTES

Conduct Covered.

Where individuals purported to represent a nonexistent corporation which obtained a leasehold interest in real property located within Arkansas, this activity was conduct for which they could be personally liable under this section. *Keene v. National Medical Care, Inc.*, 700 F. Supp. 458 (E.D. Ark. 1988).

In order to find liability under this section, there must be a finding that the persons sought to be charged acted as or on behalf of the corporation and knew there was no incorporation under this act. *Harris v. Looney*, 44 Ark. App. 127, 862 S.W.2d 282 (1993).

4-27-205. Organization of corporation.

(a) After incorporation:

(1) if initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting;

(2) if initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

(i) to elect directors and complete the organization of the corporation; or

(ii) to elect a board of directors who shall complete the organization of the corporation.

(b) Action required or permitted by this chapter to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one (1) or more written consents describing the action taken and signed by each incorporator.

(c) An organizational meeting may be held in or out of this state.

History. Acts 1987, No. 958, § 64-205.

4-27-206. Bylaws.

(a) The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

(b) The bylaws of a corporation may contain any provision for managing the business and regulating the affairs of the corporation that is not inconsistent with law or the articles of incorporation.

History. Acts 1987, No. 958, § 64-206.

4-27-207. Emergency bylaws.

(a) Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency defined in subsection (d) of this section. The emergency

bylaws, which are subject to amendment or repeal by the shareholders, may make all provisions necessary for managing the corporation during the emergency, including:

- (1) procedures for calling a meeting of the board of directors;
- (2) quorum requirements for the meeting; and
- (3) designation of additional or substitute directors.

(b) All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

(c) Corporate action taken in good faith in accordance with the emergency bylaws:

- (1) binds the corporation; and

(2) may not be used to impose liability on a corporate director, officer, employee, or agent.

(d) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

History. Acts 1987, No. 958, § 64-207.

SUBCHAPTER 3 — PURPOSES AND POWERS

SECTION.

4-27-301. Purposes.

4-27-302. General powers.

SECTION.

4-27-303. Emergency powers.

4-27-304. Ultra vires.

4-27-301. Purposes.

(a) Every corporation incorporated under this chapter has the purpose of engaging in any lawful business unless a more limited purpose is specifically set forth in the articles of incorporation. A statement of a corporation's primary purpose or purposes made pursuant to § 4-27-202(a)(5) shall not be construed as a specific limitation of the broad purposes for which the corporation may be organized.

(b) A corporation engaging in a business that is subject to regulation under another statute of this state may incorporate under this chapter only if permitted by, and subject to all limitations of, the other statute.

History. Acts 1987, No. 958, § 64-301.

4-27-302. General powers.

Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including without limitation, power:

- (1) to sue and be sued, complain and defend in its corporate name;
- (2) to have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;

(3) to make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for managing the business and regulating the affairs of the corporation;

(4) to purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;

(5) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

(6) to purchase, receive, subscribe for, or otherwise acquire; own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of; and deal in and with shares or other interests in, or obligations of, any other entity;

(7) to make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations (which may be convertible into or include the option to purchase other securities of the corporation), and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;

(8) to lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

(9) to be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;

(10) to conduct its business, locate offices, and exercise the powers granted by this chapter within or without this state;

(11) to elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit;

(12) to pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents;

(13) to make donations for the public welfare or for charitable, scientific, or educational purposes;

(14) to transact any lawful business that will aid governmental policy;

(15) to make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the corporation.

History. Acts 1987, No. 958, § 64-302.

RESEARCH REFERENCES

Ark. L. Rev. Note, Hall v. Staha: Arkansas Courts Adopt the Business Judgment Rule as a Tool of Judicial Review

and Analyze the Issue of Excessive Executive Compensation, 47 Ark. L. Rev. 959.

4-27-303. Emergency powers.

(a) In anticipation of or during an emergency defined in subsection (d) of this section, the board of directors of a corporation may:

(1) modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and

(2) relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

(b) During an emergency defined in subsection (d) of this section, unless emergency bylaws provide otherwise:

(1) notice of a meeting of the board of directors need be given only to those directors whom it is practicable to reach and may be given in any practicable manner, including by publication and radio; and

(2) one (1) or more officers of the corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

(c) Corporate action taken in good faith during an emergency under this section to further the ordinary affairs of the corporation:

(1) binds the corporation; and

(2) may not be used to impose liability on a corporate director, officer, employee, or agent.

(d) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

History. Acts 1987, No. 958, § 64-303.

4-27-304. Ultra vires.

(a) Except as provided in subsection (b) of this section, the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

(b) A corporation's power to act may be challenged:

(1) in a proceeding by a shareholder against the corporation to enjoin the act;

(2) in a proceeding by the corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the corporation; or

(3) in a proceeding by the Attorney General under § 4-27-1430.

(c) In a shareholder's proceeding under subsection (b)(1) of this section to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if equitable and if all affected persons are parties in the proceeding, and may award damages for loss (other than anticipated profits) suffered by the corporation or another party because of enjoining the unauthorized act.

History. Acts 1987, No. 958, § 64-304.

SUBCHAPTER 4 — NAMES**SECTION.**

4-27-401. Corporate name.

4-27-402. Reserved name.

4-27-403. Registered name.

SECTION.

4-27-404. Use of fictitious names.

4-27-405. Injunction against use of unlawful name.

4-27-401. Corporate name.

(a) A corporate name:

(1) must contain the word “corporation,” “incorporated,” “company,” or “limited,” or the abbreviation “corp.,” “inc.,” “co.,” or “ltd.,” or words or abbreviations of like import in another language; and

(2) may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by § 4-27-301 and its articles of incorporation.

(b) Except as authorized by subsections (c) and (d) of this section, a corporate name must be distinguishable upon the records of the Secretary of State from:

(1) the corporate name of a corporation incorporated or authorized to transact business in this state;

(2) a corporate name reserved or registered under §§ 4-27-402 or 4-27-403;

(3) the fictitious name adopted by a foreign corporation authorized to transact business in this state because its real name is unavailable; and

(4) the corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state.

(c) A corporation may apply to the Secretary of State for authorization to use a name that is not distinguishable upon his records from one (1) or more of the names described in subsection (b) of this section. The Secretary of State shall authorize use of the name applied for if:

(1) the other corporation consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying corporation; or

(2) the applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(d) A corporation may use the name of another domestic or foreign corporation that is used in this state if the corporation is incorporated or authorized to transact business in this state and the proposed user corporation:

(1) has merged with the other corporation;

(2) has been formed by reorganization of the other corporation; or

(3) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

History. Acts 1987, No. 958, § 64-401.

4-27-402. Reserved name.

(a) A person may reserve the exclusive use of a corporate name by delivering an application to the Secretary of State for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the Secretary of State finds that the corporate name applied for is available, he shall reserve the name for the applicant's exclusive use for a nonrenewable one hundred twenty-day period.

(b) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the Secretary of State a signed notice of the transfer that states the name and address of the transferee.

History. Acts 1987, No. 958, § 64-402.

4-27-403. Registered name.

(a) A foreign corporation may register its corporate name, or its corporate name with any addition required by § 4-27-1506, if the name is distinguishable upon the records of the Secretary of State from the corporate names that are not available under § 4-27-401(b)(3).

(b) A foreign corporation registers its corporate name, or its corporate name with any addition required by § 4-27-1506, by delivering it to the Secretary of State for filing an application:

(1) Setting forth its corporate name, or its corporate name with any addition required by § 4-27-1506, the state or country and date of its incorporation, and a brief description of the nature of the business in which it is engaged; and

(2) Accompanied by a certificate of existence (or a document of similar import) from the state or country of incorporation.

(c) The name is registered for the applicant's exclusive use upon the effective date of the application.

(d) A foreign corporation whose registration is effective may renew it for successive years by delivering to the Secretary of State for filing a renewal application, which complies with the requirements of subsection (b) of this section, between October 1 and December 31 of the preceding year. The renewal application when filed renews the registration for the following calendar year.

(e) A foreign corporation whose registration is effective may thereafter qualify as a foreign corporation under the registered name or consent in writing to the use of that name by a corporation thereafter incorporated under this chapter or by another foreign corporation thereafter authorized to transact business in this state. The registration terminates when the domestic corporation is incorporated or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

History. Acts 1987, No. 958, § 64-403.

4-27-404. Use of fictitious names.

(a) No corporation (domestic or foreign) shall conduct any business in this state under a fictitious name unless it first files with the Secretary of State, and, in case of a domestic corporation, with the county clerk of the county in which the corporation's registered office is located (unless it is located in Pulaski County), a form supplied or approved by the Secretary of State giving the following information:

(1) The fictitious name under which business is being or will be conducted by the applicant corporation;

(2) A brief statement of the character of business to be conducted under the fictitious name;

(3) The corporate name, state of incorporation, and location (giving city and street address) of the registered office in the state of the applicant corporation.

(b) Each such form shall be executed (without verification) in duplicate and filed with the Secretary of State. The Secretary of State shall retain one (1) counterpart; and the other counterpart, bearing the file marks of the Secretary of State, shall be returned to the corporation and, unless its registered office is in Pulaski County, filed by it with the county clerk. An index of such filings shall be maintained in each office. However, the Secretary of State shall not accept such filing unless the proposed fictitious name is distinguishable upon the records of the Secretary of State from the name of any domestic corporation, or any foreign corporation authorized to do business in the state or any name reserved or registered under §§ 4-27-402 and 4-27-403.

(c) Copies of such filed forms, certified by the respective filing officers, shall be admitted in evidence where the question of filing may be material.

(d) If, after a filing hereunder, the applicant corporation is dissolved, or (being a foreign corporation) surrenders or forfeits its rights to do business in Arkansas or (whether a domestic or foreign corporation) ceases to do business in Arkansas under the specified fictitious name, such corporation shall be obligated to file in each of the offices aforesaid a cancellation of its privilege hereunder. If such cancellation is not filed, the Secretary of State, upon satisfactory evidence, may cancel such privilege; in which event such cancellation shall be certified by the Secretary of State to the county clerk, who will file the same without fee.

(e) If a corporation which has not filed hereunder has heretofore or shall hereafter become a party to any contract, deed, conveyance, assignment or instrument of encumbrance in which such corporation is referred to exclusively by a fictitious name, the obligations imposed upon such corporation under said instrument and the right sought to be conferred upon third parties thereunder may be enforced against it; but the rights accruing to such corporation under said instrument may not be enforced by the corporation in the courts of this state until it complies with this section and pays to the Treasurer of State a civil

penalty of three hundred dollars (\$300); and in any suit by a corporation upon an instrument executed on or after midnight, December 31, 1987, which identifies it exclusively by a fictitious name, the corporation shall be required to allege compliance with this section.

(f) Compliance with this section does not give a corporation an exclusive right to the use of the fictitious name; and the registration of a fictitious name hereunder will not bar the use of the same name as the corporate name of any domestic corporation or any foreign corporation authorized to do business in this state. But this chapter is not intended to bar any aggrieved party, in such a situation, from applying for equitable relief under principles of fair trade law.

History. Acts 1987, No. 958, § 64-404; 1997, No. 399, § 2.
Amendments. The 1997 amendment substituted “unless the proposed fictitious name is distinguishable upon the records of the Secretary of State from” for “if the proposed fictitious name is the same as, or confusingly similar to” in the last sentence in (b).

4-27-405. Injunction against use of unlawful name.

Where the use, reservation, or registration of a corporate name is in violation of this chapter, it may by court decree be cancelled or enjoined, on the suit of the Attorney General or of any person or corporation injured by such unlawful use, reservation, or registration, notwithstanding the fact that such use, reservation, or registration has been approved by the Secretary of State.

History. Acts 1987, No. 958, § 64-405.

SUBCHAPTER 5 — OFFICE AND AGENT

SECTION.	SECTION.
4-27-501. Registered office and registered agent.	4-27-503. Resignation of registered agent.
4-27-502. Change of registered office or registered agent.	4-27-504. Service on corporation.

4-27-501. Registered office and registered agent.

- Each corporation must continuously maintain in this state:
- (1) a registered office that may be the same as any of its places of business; and
 - (2) a registered agent, who may be:
 - (i) an individual who resides in this state and whose business office is identical with the registered office;
 - (ii) a domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office; or
 - (iii) a foreign corporation or not-for-profit foreign corporation authorized to transact business in this state whose business office is identical with the registered office.

History. Acts 1987, No. 958, § 64-501.

CASE NOTES

Cited: Citicorp Indus. Credit, Inc. v. Wal-Mart Stores, Inc., 305 Ark. 530, 809 S.W.2d 815 (1991).

4-27-502. Change of registered office or registered agent.

(a) A corporation may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:

- (1) the name of the corporation;
- (2) the street address of its current registered office;
- (3) if the current registered office is to be changed, the street address of the new registered office;
- (4) the name of its current registered agent;
- (5) if the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent (either on the statement or attached to it) to the appointment; and
- (6) that after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(b) If a registered agent changes the street address of his business office, he may change the street address of the registered office of any corporation for which he is the registered agent by notifying the corporation in writing of the change and signing (either manually or in facsimile) and delivering to the Secretary of State for filing a statement that complies with the requirements of subsection (a) of this section and recites that the corporation has been notified of the change.

History. Acts 1987, No. 958, § 64-502.

CASE NOTES

Cited: *Sisson v. Ragland*, 294 Ark. 629, 745 S.W.2d 620 (1988).

4-27-503. Resignation of registered agent.

A. A registered agent may resign his agency appointment by signing and delivering to the Secretary of State for filing the signed original and two (2) exact or conformed copies of a statement of resignation. The statement may include a statement that the registered office is also discontinued.

B. After filing the statement, the Secretary of State shall mail one (1) copy to the registered office (if not discontinued) and the other copy to the corporation at its principal office.

C. The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

History. Acts 1987, No. 958, § 64-503.

4-27-504. Service on corporation.

(a) A corporation's registered agent is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation.

(b) If a corporation has no registered agent, or the agent cannot, with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office.

(c) This section does not prescribe the only means, or necessarily the required means, of serving a corporation.

(d) If a corporation has no registered agent, or the agent cannot, with reasonable due diligence, be served and service has been attempted and failed under subsection B. of this section, service of process, notice, or demand required or permitted by law to be served on the corporation may be made upon any corporation with twenty-five (25) or less locations by physical personal service on any officer of the corporation at any location of the corporation.

(e) Subsection (d) of this section shall not apply to public utilities.

History. Acts 1987, No. 958, § 64-504; 2001, No. 1815, § 1. deleted the last sentence in (b); deleted (b)(1)-(3); and added present (d) and (e).

Amendments. The 2001 amendment

SUBCHAPTER 6 — SHARES AND DISTRIBUTIONS

SECTION.

Part A: Shares

- 4-27-601. Authorized shares.
- 4-27-602. Terms of class or series determined by board of directors.
- 4-27-603. Issued and outstanding shares.
- 4-27-604. Fractional shares.
- 4-27-605 — 4-27-619. [Reserved.]

Part B: Issuance of Shares

- 4-27-620. Subscription for shares before incorporation.
- 4-27-621. Issuance of shares.
- 4-27-622. Liability of shareholders.
- 4-27-623. Share dividends.
- 4-27-624. Share options.
- 4-27-625. Form and content of certificates.

SECTION.

- 4-27-626. Shares without certificates.
- 4-27-627. Restriction on transfer of shares and other securities.
- 4-27-628. Expense of issue.
- 4-27-629. [Reserved.]

Part C: Subsequent Acquisition of Shares by Shareholder and Corporation

- 4-27-630. Shareholders' preemptive rights.
- 4-27-631. Corporation's acquisition of its own shares.
- 4-27-632 — 4-27-639. [Reserved.]

Part D: Distributions

- 4-27-640. Distributions to shareholders.

Effective Dates. Acts 1989, No. 583, § 8: Mar. 15, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that present law has no provisions for registered investment companies; that such laws are needed to properly govern investment companies and to clarify the status of investment companies; and that adoption of Subchapter M of the Internal Revenue

Code of 1986 is necessary to provide uniform tax laws on both the State and Federal levels for investment companies. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Part A: Shares

4-27-601. Authorized shares.

(a) The articles of incorporation must prescribe the classes of shares, the number of shares of each class that the corporation is authorized to issue, and a statement of the par value of the shares of each class or a statement that the shares of a class are to be without par value. If more than one class of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class, and, prior to the issuance of shares of a class, the preferences, limitations, and relative rights of that class must be described in the articles of incorporation. All shares of a class must have preferences, limitations, and relative rights identical with those of other shares of the same class except to the extent otherwise permitted by § 4-27-602.

(b) The articles of incorporation must authorize (1) one or more classes of shares that together have unlimited voting rights, and (2) one or more classes of shares (which may be the same class or classes as those with voting rights) that together are entitled to receive the net assets of the corporation upon dissolution.

(c) The articles of incorporation may authorize one (1) or more classes of shares that:

(1) have special, conditional, or limited voting rights, or no right to vote, except to the extent prohibited by this chapter, or by the Arkansas Constitution, Article 12, § 8, which guarantees the right of all stockholders to vote on a proposal to increase the capital stock or bond indebtedness of the corporation;

(2) are redeemable or convertible as specified in the articles of incorporation (i) at the option of the corporation, the shareholder, or another person, or upon the occurrence of a designated event; (ii) for cash, indebtedness, securities, or other property; (iii) in a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events;

(3) entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative;

(4) have preference over any other class of shares with respect to distributions, including dividends and distributions upon the dissolution of the corporation.

(d) The description of the designations, preferences, limitations, and relative rights of share classes in subsection (c) of this section is not exhaustive.

(e) The board of directors of an investment company may increase or decrease the aggregate number of shares of stock, or the number of shares of stock of any class, that the corporation has the authority to issue, unless a provision has been legally included in the articles of incorporation of the corporation after May 1, 1989, prohibiting an act by the board of directors to increase or decrease the aggregate number of shares of stock or the number of shares of stock of any class that the corporation has authority to issue.

(1) If the board of directors of an investment company increases or decreases the aggregate number of shares of stock or the number of shares of stock of any class that the corporation has the authority to issue in accordance with subsection (e) of this section, the board of directors, before issuing any of the newly authorized stock, shall file articles supplementary for recording with the Secretary of State.

(2) Articles supplementary shall include:

(i) Both as of immediately before the increase or decrease and as increased or decreased: (1) The total number of shares of stock of all classes that the corporation has authority to issue; (2) The number of shares of stock of each class; (3) The par value of the shares of stock of each class or a statement that the shares are without par value; and (4) If there are any shares of stock with par value, the aggregate par value of all the shares of all classes;

(ii) A statement that the corporation is registered as an investment company under the Investment Company Act of 1940; and

(iii) A statement that the total number of shares of capital stock that the corporation has authority to issue has been increased or decreased by the board of directors in accordance with subsection (e) of this section.

(3) In order to be filed, articles supplementary shall be accompanied by an opinion of legal counsel licensed in this state and familiar with the Investment Company Act of 1940 opining that the statements contained in subdivisions (e)(2)(ii) and (iii) of this section are correct to the best of such counsel's knowledge and said articles supplementary shall be executed in the manner required by § 4-27-120.

History. Acts 1987, No. 958, § 64-601; Act of 1940, referred to in this section, is 1989, No. 583, § 2. codified as 15 U.S.C. § 80b-1 to 80b-21.

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4-27-602. Terms of class or series determined by board of directors.

(a) If the articles of incorporation so provide, the board of directors may determine, in whole or part, the preferences, limitations, and relative rights (within the limits set forth in § 4-27-601) of (1) any class of shares before the issuance of any shares of that class or (2) one or

more series within a class before the issuance of any shares of that series.

(b) Each series of a class must be given a distinguishing designation.

(c) All shares of a series must have preferences, limitations, and relative rights identical with those of other shares of the same series and, except to the extent otherwise provided in the description of the series, with those of other series of the same class.

(d) Before issuing any shares of a class or series created under this section, the corporation must deliver to the Secretary of State for filing articles of amendment, which are effective without shareholder action, that set forth:

(1) the name of the corporation;

(2) the text of the amendment determining the terms of the class or series of shares;

(3) the date it was adopted; and

(4) a statement that the amendment was duly adopted by the board of directors.

History. Acts 1987, No. 958, § 64-602.

4-27-603. Issued and outstanding shares.

(a) A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Shares that are issued are outstanding shares until they are reacquired, redeemed, converted, or cancelled.

(b) The reacquisition, redemption, or conversion of outstanding shares is subject to the limitations of subsection (c) of this section and to § 4-27-640.

(c) At all times that shares of the corporation are outstanding, one or more shares that together have unlimited voting rights and one or more shares that together are entitled to receive the net assets of the corporation upon dissolution must be outstanding.

History. Acts 1987, No. 958, § 64-603.

4-27-604. Fractional shares.

(a) A corporation may:

(1) issue fractions of a share or pay in money the value of fractions of a share;

(2) arrange for disposition of fractional shares by the shareholders;

(3) issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share.

(b) Each certificate representing scrip must be conspicuously labeled "scrip" and must contain the information required by § 4-27-625(b).

(c) The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends, and to participate in the assets of the corporation upon liquidation. The holder

of scrip is not entitled to any of these rights unless the scrip provides for them.

(d) The board of directors may authorize the issuance of scrip subject to any condition considered desirable, including:

(1) that the scrip will become void if not exchanged for full shares before a specified date; and

(2) that the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scripholders.

History. Acts 1987, No. 958, § 64-604.

4-27-605 — 4-27-619. [Reserved.]

Part B: Issuance of Shares

4-27-620. Subscription for shares before incorporation.

(a) A subscription for shares entered into before incorporation is irrevocable for six months unless the subscription agreement provides a longer or shorter period or all the subscribers agree to revocation.

(b) The board of directors may determine the payment terms of subscription for shares that were entered into before incorporation, unless the subscription agreement specifies them. A call for payment by the board of directors must be uniform so far as practicable as to all shares of the same class or series, unless the subscription agreement specifies otherwise.

(c) Shares issued pursuant to subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.

(d) If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind the agreement and may sell the shares if the debt remains unpaid for more than 20 days after the corporation sends written demand for payment to the subscriber.

(e) A corporation that issues shares pursuant to a subscription agreement entered into before incorporation must comply with § 4-27-621(b)(c), and (f). A subscription agreement entered into after incorporation is a contract between the subscriber and the corporation subject to all of the provisions of § 4-27-621.

History. Acts 1987, No. 958, § 64-605.

4-27-621. Issuance of shares.

(a) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.

(b) The board of directors may authorize shares to be issued for consideration consisting of money paid, labor done, or property actually

received. Neither promissory notes nor the promise of future services shall constitute valid consideration for the issuance of shares.

(c) Shares having a par value may not be issued for consideration less than the par value of such shares.

(d) Before the corporation issues shares, the board of directors must determine that the consideration received or to be received for shares to be issued is adequate. That determination by the board of directors is conclusive insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid, and nonassessable.

(e) When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued therefor are fully paid and nonassessable.

(f) Shares may not be issued until the full amount of the consideration for the shares, fixed as provided by law, has been paid.

History. Acts 1987, No. 958, § 64-606.

4-27-622. Liability of shareholders.

(a) A purchaser from a corporation of its own shares is not liable to the corporation or its creditors with respect to the shares except to pay the full consideration, fixed as provided by law, for which the shares were issued or were to be issued.

(b) Unless otherwise provided in the articles of incorporation, a shareholder of a corporation is not personally liable for the acts or debts of the corporation except that he may become personally liable by reason of his own acts or conduct.

History. Acts 1987, No. 958, § 64-607.

4-27-623. Share dividends.

(a) Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation's shareholders or to the shareholders of one (1) or more classes or series. An issuance of shares under this subsection is a share dividend.

(b) Shares of one class or series may not be issued as a share dividend in respect of shares of another class or series unless (1) the articles of incorporation so authorize, (2) a majority of the votes entitled to be cast by the class or series to be issued approve the issue, or (3) there are no outstanding shares of the class or series to be issued.

(c) If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, it is the date the board of directors authorizes the share dividend.

History. Acts 1987, No. 958, § 64-608.

4-27-624. Share options.

A corporation may issue rights, options, or warrants for the purchase of shares of the corporation. The board of directors shall determine the terms upon which the rights, options, or warrants are issued, their form and content, and the consideration for which the shares are to be issued.

History. Acts 1987, No. 958, § 64-609.

4-27-625. Form and content of certificates.

(a) Shares may but need not be represented by certificates. Unless this chapter or another statute expressly provides otherwise, the rights and obligations of shareholders are identical whether or not their shares are represented by certificates.

(b) At a minimum each share certificate must state on its face:

(1) the name of the issuing corporation and that it is organized under the law of this state;

(2) the name of the person to whom issued;

(3) the number and class of shares and the designation of the series, if any, the certificate represents; and

(4) the par value of the shares, or if the shares have no par value, a statement of such fact.

(c) If the issuing corporation is authorized to issue different classes of shares or different series within a class, the designations, relative rights, preferences, and limitations applicable to each class and the variations in rights, preferences, and limitations determined for each series (and the authority of the board of directors to determine variations for future series) must be summarized on the front or back of each certificate. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information on request in writing and without charge.

(d) Each share certificate (1) must be signed (either manually or in facsimile) by two officers designated in the bylaws or by the board of directors and (2) must bear the corporate seal or its facsimile.

(e) If the person who signed (either manually or in facsimile) a share certificate no longer holds office when the certificate is issued, the certificate is nevertheless valid.

History. Acts 1987, No. 958, § 64-610.

4-27-626. Shares without certificates.

(a) Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the issue of some or all the shares of any or all of its classes or series without certificates. The authorization does not affect shares already represented by certificates until they are surrendered to the corporation.

(b) Within a reasonable time after the issue or transfer of shares without certificates, the corporation shall send the shareholder a written statement of the information required on certificates by § 4-27-625(b) and (c), and, if applicable, § 4-27-627.

History. Acts 1987, No. 958, § 64-611;
1987 (1st Ex. Sess.), No. 11, § 3.

4-27-627. Restriction on transfer of shares and other securities.

(a) The articles of incorporation, bylaws, an agreement among shareholders, or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation. A restriction does not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction.

(b) A restriction on the transfer or registration of transfer of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate or is contained in the information statement required by § 4-27-626(b). Unless so noted, a restriction is not enforceable against a person without knowledge of the restriction.

(c) A restriction on the transfer or registration of transfer of shares is authorized:

(1) to maintain the corporation's status when it is dependent on the number or identity of its shareholders;

(2) to preserve exemptions under federal or state securities law;

(3) for any other reasonable purpose.

(d) A restriction on the transfer or registration of transfer of shares may:

(1) obligate the shareholder first to offer the corporation or other persons (separately, consecutively, or simultaneously) an opportunity to acquire the restricted shares;

(2) obligate the corporation or other persons (separately, consecutively, or simultaneously) to acquire the restricted shares;

(3) require the corporation, the holders of any class of its shares, or another person to approve the transfer of the restricted shares, if the requirement is not manifestly unreasonable;

(4) prohibit the transfer of the restricted shares to designated persons or classes of persons, if the prohibition is not manifestly unreasonable.

(e) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

History. Acts 1987, No. 958, § 64-612;
1987 (1st Ex. Sess.), No. 11, § 4.

4-27-628. Expense of issue.

A corporation may pay the expenses of selling or underwriting its shares, and of organizing or reorganizing the corporation, from the consideration received for shares.

History. Acts 1987, No. 958, § 64-613.

4-27-629. [Reserved.]**Part C: Subsequent Acquisition of Shares by Shareholder and Corporation****4-27-630. Shareholders' preemptive rights.**

(a) The shareholders of a corporation do not have a preemptive right to acquire the corporation's unissued shares except to the extent the articles of incorporation so provide.

(b) A statement included in the articles of incorporation that "the corporation elects to have preemptive rights" (or words of similar import) means that the following principles apply except to the extent the articles of incorporation expressly provide otherwise:

(1) The shareholders of the corporation have a preemptive right, granted on uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the right, to acquire proportional amounts of the corporation's unissued shares upon the decision of the board of directors to issue them.

(2) A shareholder may waive his preemptive right. A waiver evidenced by a writing is irrevocable even though it is not supported by consideration.

(3) There is no preemptive right with respect to:

(i) shares issued as compensation to directors, officers, agents, or employees of the corporation, its subsidiaries or affiliates;

(ii) shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents, or employees of the corporation, its subsidiaries or affiliates;

(iii) shares authorized in articles of incorporation that are issued within six (6) months from the effective date of incorporation;

(iv) shares sold otherwise than for money.

(4) Holders of shares of any class without general voting rights but with preferential rights to distributions or assets have no preemptive rights with respect to shares of any class.

(5) Holders of shares of any class with general voting rights but without preferential rights to distributions or assets have no preemptive rights with respect to shares of any class with preferential rights to distributions or assets unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire shares without preferential rights;

(6) Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of one (1) year

after being offered to shareholders at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of one year is subject to the shareholders' preemptive rights.

(c) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

History. Acts 1987, No. 958, § 64-614.

RESEARCH REFERENCES

Ark. L. Rev. Note, Hall v. Staha: Arkansas Courts Adopt the Business Judgment Rule as a Tool of Judicial Review and Analyze the Issue of Excessive Executive Compensation, 47 Ark. L. Rev. 959.

4-27-631. Corporation's acquisition of its own shares.

(a) A corporation may acquire its own shares, and shares so acquired constitute authorized but unissued shares.

(b) If the articles of incorporation prohibit the reissue of acquired shares, the number of authorized shares is reduced by the number of shares acquired, effective upon amendment of the articles of incorporation.

(c) The board of directors may adopt articles of amendment under this section without shareholder action and deliver them to the Secretary of State for filing. The articles must set forth:

- (1) the name of the corporation;
- (2) the reduction in the number of authorized shares, itemized by class and series; and
- (3) the total number of authorized shares, itemized by class and series, remaining after reduction of the shares.

History. Acts 1987, No. 958, § 64-615.

4-27-632 — 4-27-639. [Reserved.]

Part D: Distributions

4-27-640. Distributions to shareholders.

(a) A board of directors may authorize and the corporation may make distributions to its shareholders subject to restriction by the articles of incorporation and the limitation in subsection (c) of this section.

(b) If the board of directors does not fix the record date for determining shareholders entitled to a distribution (other than one involving a repurchase or reacquisition of shares), it is the date the board of directors authorizes the distribution.

(c) No distribution may be made if, after giving it effect:

- (1) The corporation would not be able to pay its debts as they become due in the usual course of business; or

(2) The corporation's total assets would be less than the sum of its total liabilities plus (unless the articles of incorporation permit otherwise) the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

(d) The board of directors may base a determination that a distribution is not prohibited under subsection (c). of this section either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(e) The effect of a distribution under subsection (c). of this section is measured:

(1) In the case of distribution by purchase, redemption, or other acquisition of the corporation's shares, as of the earlier of (i) the date money or other property is transferred or debt incurred by the corporation or (ii) the date the shareholder ceases to be a shareholder with respect to the acquired shares;

(2) in the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and

(3) in all other cases, as of (i) the date the distribution is authorized if the payment occurs within one hundred twenty (120) days after the date of authorization or (ii) the date the payment is made if it occurs more than one hundred twenty (120) days after the date of authorization.

(f) A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.

(g) If the articles of incorporation or bylaws of an investment company so provide, the board of directors may delegate to a committee of the board of directors, or to the officers of the corporation, the authority to determine the amount of, to declare, and to distribute dividends in accordance with the policies adopted by the board of directors.

History. Acts 1987, No. 958, § 64-616;
1989, No. 583, § 4.

SUBCHAPTER 7 — SHAREHOLDERS

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4-27-732 — 4-27-739. [Reserved.]

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4-27-740. Procedure in derivative proceedings.

Effective Dates. Acts 1989, No. 583, § 8; Mar. 15, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that present law has no provisions for registered investment companies; that such laws are needed to properly govern investment companies and to clarify the status of investment companies; and that adoption of Subchapter M of the Internal Revenue

Code of 1986 is necessary to provide uniform tax laws on both the State and Federal levels for investment companies. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Part A: Meetings

4-27-701. Annual meeting.

(a) A corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws.

(b) Annual shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.

(c) The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

(d) If the articles of incorporation or bylaws of an investment company so provide, the corporation is not required to hold an annual meeting in any year in which no action is to be taken which requires a vote of shareholders under the Investment Company Act of 1940, unless a meeting is called by more than fifty percent (50%) of the holders of all classes of shares of the corporation or by more than fifty percent (50%) of the board of directors.

History. Acts 1987, No. 958, § 64-701; 1989, No. 583, § 3.

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Act of 1940, referred to in this section, is codified as 15 U.S.C. § 80b-1 to 80b-21.

4-27-702. Special meeting.

- (a) A corporation shall hold a special meeting of shareholders:
- (1) on call of its board of directors or the person or persons authorized to do so by the articles of incorporation or bylaws; or
 - (2) if the holders of at least ten percent (10%) of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation's secretary one (1) or more written demands for the meeting describing the purpose or purposes for which it is to be held.
- (b) If not otherwise fixed under § 4-27-703 or § 4-27-707, the record date for determining shareholders entitled to demand a special meeting is the date the first shareholder signs the demand.
- (c) Special shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.
- (d) Only business within the purpose or purposes described in the meeting notice required by § 4-27-705(c) may be conducted at a special shareholders' meeting.

History. Acts 1987, No. 958, § 64-702.

4-27-703. Court-ordered meeting.

- (a) The circuit court of the county where a corporation's principal office (or, if none in this state, its registered office) is located may summarily order a meeting to be held:
- (1) on application of any shareholder of the corporation entitled to participate in an annual meeting if an annual meeting was not held within the earlier of six (6) months after the end of the corporation's fiscal year or fifteen (15) months after its last annual meeting; or
 - (2) On application of a shareholder who signed a demand for a special meeting valid under § 4-27-702, if:
 - (i) notice of the special meeting was not given within thirty (30) days after the date the demand was delivered to the corporation's secretary; or
 - (ii) the special meeting was not held in accordance with the notice.
- (b) The court may fix the time and place of the meeting, determine the shares entitled to participate in the meeting, specify a record date for determining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting (or direct that the votes represented at the meeting constitute a quorum for action on those matters), and enter other orders necessary to accomplish the purpose or purposes of the meeting.

History. Acts 1987, No. 958, § 64-703.

4-27-704. Action without meeting.

(a) Action on proposals to increase the capital stock or bond indebtedness of a corporation may be taken without a meeting of shareholders if one (1) or more written consents, setting forth the action so taken, shall be signed by all of the shareholders of the corporation. Any other action required or permitted by this chapter to be taken at a meeting of shareholders may be taken without a meeting if one (1) or more written consents, setting forth the action so taken, shall be signed by the holders of outstanding shares having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Any written consent executed by one (1) or more shareholders pursuant to this section shall be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) If not otherwise fixed under § 4-27-703 or § 4-27-707, the record date for determining shareholders entitled to take action without a meeting is the date the first shareholder signs the consent under subsection (a) of this section.

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

(d) If this chapter requires that notice of proposed action be given to nonvoting shareholders and the action is to be taken by written consent of the voting shareholders, the corporation must give its nonvoting shareholders written notice of the proposed action at least ten (10) days before the action is taken. The notice must contain or be accompanied by the same material that, under this chapter, would have been required to be sent to nonvoting shareholders in a notice of meeting at which the proposed action would have been submitted to the shareholders for action.

History. Acts 1987, No. 958, § 64-704.

4-27-705. Notice of meeting.

(a) A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting no fewer than sixty (60) nor more than seventy-five (75) days before the meeting date if a proposal to increase the authorized capital stock or bond indebtedness of the corporation is to be submitted, and no fewer than ten (10) nor more than sixty (60) days before the meeting date in all other cases. Unless this chapter or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.

(b) Unless this chapter or the articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.

(c) Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called. For purposes of this section, an annual meeting at which a proposal to increase the

authorized capital stock or bond indebtedness of the corporation is to be submitted shall be deemed a special meeting.

(d) If not otherwise fixed under § 4-27-703 or § 4-27-707, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the day before the first notice is delivered to shareholders.

(e) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under § 4-27-707, however, notice of the adjourned meeting must be given under this section to persons who are shareholders as of the new record date.

History. Acts 1987, No. 958, § 64-705; 1987 (1st Ex. Sess.), No. 11, § 4[4A].

4-27-706. Waiver of notice.

(a) A shareholder may waive any notice required by this chapter, the articles of incorporation, or bylaws before or after the date and time stated in the notice. The waiver must be in writing, be signed by the shareholder entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) A shareholder's attendance at a meeting:

(1) waives objection to lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting;

(2) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

History. Acts 1987, No. 958, § 64-706.

4-27-707. Record date.

(a) The bylaws may fix or provide the manner of fixing the record date for one (1) or more voting groups in order to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote, or to take any other action. If the bylaws do not fix or provide for fixing a record date, the board of directors of the corporation may fix a future date as the record date.

(b) A record date fixed under this section may not be more than seventy (70) days before the meeting or action requiring a determination of shareholders.

(c) A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it must do

if the meeting is adjourned to a date more than one hundred twenty (120) days after the date fixed for the original meeting.

(d) If a court orders a meeting adjourned to a date more than one hundred twenty (120) days after the date fixed for the original meeting, it may provide that the original record date continues in effect or it may fix a new record date.

History. Acts 1987, No. 958, § 64-707.

4-27-708 — 4-27-719. [Reserved.]

Part B: Voting

4-27-720. Shareholders' list for meeting.

(a) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. The list must be arranged by voting group (and within each voting group by class or series of shares) and show the address of and number of shares held by each shareholder.

(b) The shareholders' list must be available for inspection by any shareholder, beginning two (2) business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholder, his agent, or attorney is entitled on written demand to inspect and, subject to the requirements of § 4-27-1602(c), to copy the list, during regular business hours and at his expense, during the period it is available for inspection.

(c) The corporation shall make the shareholders' list available at the meeting, and any shareholder, his agent, or attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(d) If the corporation refuses to allow a shareholder, his agent, or attorney to inspect the shareholders' list before or at the meeting (or copy the list as permitted by subsection (b) of this section), the circuit court of the county where a corporation's principal office (or, if none in this state, its registered office) is located, on application of the shareholder, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

(e) Refusal or failure to prepare or make available the shareholders' list does not affect the validity of action taken at the meeting.

History. Acts 1987, No. 958, § 64-708.

4-27-721. Voting entitlement of shares.

(a) Except as provided in subsections (b) and (c) of this section or unless the articles of incorporation provide otherwise, each outstanding

share, regardless of class, is entitled to one (1) vote on each matter voted on at a shareholders' meeting. Only shares are entitled to vote.

(b) Absent special circumstances, the shares of a corporation are not entitled to vote if they are owned, directly or indirectly, by a second corporation, domestic or foreign, and the first corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of the second corporation.

(c) Subsection (b) of this section does not limit the power of a corporation to vote any shares, including its own shares, held by it in a fiduciary capacity.

(d) Redeemable shares are not entitled to vote after notice of redemption is mailed to the holders and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial institution under an irrevocable obligation to pay the holders the redemption price on surrender of the shares.

History. Acts 1987, No. 958, § 64-709.

4-27-722. Proxies.

(a) A shareholder may vote his shares in person or by proxy.

(b) A shareholder may appoint a proxy to vote or otherwise act for him by signing an appointment form, either personally or by his attorney-in-fact.

(c) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for eleven (11) months unless a longer period is expressly provided in the appointment form.

(d) An appointment of a proxy is revocable by the shareholder unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

- (1) a pledgee;
- (2) a person who purchased or agreed to purchase the shares;
- (3) a creditor of the corporation who extended its credit under terms requiring the appointment;
- (4) an employee of the corporation whose employment contract requires the appointment; or
- (5) a party to a voting agreement created under § 4-27-731.

(e) The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises his authority under the appointment.

(f) An appointment made irrevocable under subsection (d) of this section is revoked when the interest with which it is coupled is extinguished.

(g) A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if he did not know of its existence

when he acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

(h) Subject to § 4-27-724 and to any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

History. Acts 1987, No. 958, § 64-710;
1987 (1st Ex. Sess.), No. 11, § 5.

4-27-723. Shares held by nominees.

(a) A corporation may establish a procedure by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation as the shareholder. The extent of this recognition may be determined in the procedure.

(b) The procedure may set forth:

- (1) the types of nominees to which it applies;
- (2) the rights or privileges that the corporation recognizes in a beneficial owner;
- (3) the manner in which the procedure is selected by the nominee;
- (4) the information that must be provided when the procedure is selected;
- (5) the period for which selection of the procedure is effective; and
- (6) other aspects of the rights and duties created.

History. Acts 1987, No. 958, § 64-711.

4-27-724. Corporation's acceptance of votes.

(a) If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a shareholder, the corporation if acting in good faith is entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder.

(b) If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the name of its shareholder, the corporation if acting in good faith is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder if:

- (1) the shareholder is an entity and the name signed purports to be that of an officer or agent of the entity;
- (2) the name signed purports to be that of an administrator, executor, guardian, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;
- (3) the name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evi-

dence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;

(4) the name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, consent, waiver, or proxy appointment;

(5) two (2) or more persons are the shareholder as cotenants or fiduciaries and the name signed purports to be the name of at least one (1) of the coowners and the person signing appears to be acting on behalf of all the coowners.

(c) The corporation is entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

(d) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section are not liable in damages to the shareholder for the consequences of the acceptance or rejection.

(e) Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

History. Acts 1987, No. 958, § 64-712.

4-27-725. Quorum and voting requirements for voting groups.

(a) Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of incorporation or this chapter provide otherwise, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.

(b) Once a share is represented for any purpose at a meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting.

(c) If a quorum exists, action on a matter (other than the election of directors) by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless the articles of incorporation or this chapter require a greater number of affirmative votes.

(d) An amendment of articles on incorporation adding, changing, or deleting a quorum or voting requirement for a voting group greater than specified in subsection (a) or (c) of this section is governed by § 4-27-727.

(e) The election of directors is governed by § 4-27-728.

History. Acts 1987, No. 958, § 64-713.

4-27-726. Action by single and multiple voting groups.

(a) If the articles of incorporation or this chapter provide for voting by a single voting group on a matter, action on that matter is taken when voted upon by that voting group as provided in § 4-27-725.

(b) If the articles of incorporation or this chapter provide for voting by two (2) or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in § 4-27-725. Action may be taken by one (1) voting group on a matter even though no action is taken by another voting group entitled to vote on the matter.

History. Acts 1987, No. 958, § 64-714.

4-27-727. Greater quorum or voting requirements.

(a) The articles of incorporation may provide for a greater quorum or voting requirement for shareholders (or voting groups of shareholders) than is provided for by this chapter.

(b) An amendment to the articles of incorporation that adds, changes, or deletes a greater quorum or voting requirement must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

History. Acts 1987, No. 958, § 64-715.

4-27-728. Voting for directors — Cumulative voting.

(a) Unless otherwise provided in the articles of incorporation, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present.

(b) Shareholders do not have a right to cumulate their votes for directors unless the articles of incorporation so provide.

(c) A statement included in the articles of incorporation that “[all] [a designated voting group of] shareholders are entitled to cumulate their votes for directors” (or words of similar import) means that the shareholders designated are entitled to multiply the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and cast the product for a single candidate or distribute the product among two (2) or more candidates.

(d) Shares otherwise entitled to vote cumulatively may not be voted cumulatively at a particular meeting unless:

(1) the meeting notice or proxy statement accompanying the notice states conspicuously that cumulative voting is authorized; or

(2) a shareholder who has the right to cumulate his votes gives notice to the corporation not less than forty-eight (48) hours before the time set for the meeting of his intent to cumulate his votes during the

meeting, and if one (1) shareholder gives this notice all other shareholders in the same voting group participating in the election are entitled to cumulate their votes without giving further notice.

History. Acts 1987, No. 958, § 64-716; 1987 (1st Ex. Sess.), No. 11, § 6.

4-27-729. [Reserved.]

Part C: Voting Trusts and Agreements

4-27-730. Voting trusts.

(a) One (1) or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust (which may include anything consistent with its purpose) and transferring their shares to the trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all owners of beneficial interests in the trust, together with the number and class of shares each transferred to the trust, and deliver copies of the list and agreement to the corporation's principal office.

(b) A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee's name. A voting trust is valid for not more than ten (10) years after its effective date unless extended under subsection (c) of this section.

(c) All or some of the parties to a voting trust may extend it for additional terms of not more than ten (10) years each by signing an extension agreement and obtaining the voting trustee's written consent to the extension. An extension is valid for ten (10) years from the date the first shareholder signs the extension agreement. The voting trustee must deliver copies of the extension agreement and list of beneficial owners to the corporation's principal office. An extension agreement binds only those parties signing it.

History. Acts 1987, No. 958, § 64-717.

4-27-731. Voting agreements.

(a) Two (2) or more shareholders may provide for the manner in which they will vote their shares by signing an agreement for that purpose. A voting agreement created under this section is not subject to the provisions of § 4-27-730.

(b) A voting agreement created under this section is specifically enforceable.

History. Acts 1987, No. 958, § 64-718.

4-27-732 — 4-27-739. [Reserved.]**Part D: Derivative Proceedings****4-27-740. Procedure in derivative proceedings.**

(a) A person may not commence a proceeding in the right of a domestic or foreign corporation unless he was a shareholder of the corporation when the transaction complained of occurred or unless he became a shareholder through transfer by operation of law from one who was a shareholder at that time.

(b) A complaint in a proceeding brought in the right of a corporation must be verified and allege with particularity the demand made, if any, to obtain action by the board of directors and either that the demand was refused or ignored or why he did not make the demand. Whether or not a demand for action was made, if the corporation commences an investigation of the changes made in the demand or complaint, the court may stay any proceeding until the investigation is completed.

(c) A proceeding commenced under this section may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interest of the corporation's shareholders or a class of shareholders, the court shall direct that notice be given the shareholders affected.

(d) On termination of the proceeding the court may require the plaintiff to pay any defendant's reasonable expenses (including counsel fees) incurred in defending the proceeding if it finds that the proceeding was commenced without reasonable cause.

(e) For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or held by a nominee on his behalf.

History. Acts 1987, No. 958, § 64-719;
1987 (1st Ex. Sess.), No. 11, § 7.

**SUBCHAPTER 8 — DIRECTORS — OFFICERS — MEETINGS —
STANDARDS OF CONDUCT — INDEMNIFICATION**

SECTION.

Part A: Board of Directors

- 4-27-801. Requirement for and duties of board of directors.
- 4-27-802. Qualifications of directors.
- 4-27-803. Number and election of directors.
- 4-27-804. Election of directors by certain classes of shareholders.
- 4-27-805. Terms of directors generally.
- 4-27-806. Staggered terms for directors.
- 4-27-807. Resignation of directors.
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- 4-27-809. Removal of directors by judicial proceeding.
- 4-27-810. Vacancy on board.
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Part B: Meetings and Action of the Board

- 4-27-820. Meetings.
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- 4-27-824. Quorum and voting.
- 4-27-825. Committees.

SECTION.

4-27-826 — 4-27-829. [Reserved.]

Part C: Standards of Conduct

4-27-830. General standards for directors.

4-27-831. Director conflict of interest.

4-27-832. Loans to directors.

4-27-833. Liability for unlawful distributions.

4-27-834 — 4-27-839. [Reserved.]

Part D: Officers

4-27-840. Required officers.

SECTION.

4-27-841. Duties of officers.

4-27-842. Standards of conduct for officers.

4-27-843. Resignation and removal of officers.

4-27-844. Contract rights of officers.

4-27-845 — 4-27-849. [Reserved.]

4-27-850. Indemnification of officers, directors, employees, and agents — Insurance.

RESEARCH REFERENCES

UALR L.J. Note, Director-Exculpation Corporation Act of 1987, 15 UALR L.J. 337.
Clauses Under the Arkansas Business

CASE NOTES

Cited: In re Hutchins, 216 Bankr. 11 (Bankr. E.D. Ark. 1997).

Part A: Board of Directors

4-27-801. Requirement for and duties of board of directors.

(a) Except as provided in subsection (c) of this section, each corporation must have a board of directors.

(b) All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation.

(c) A corporation having fifty (50) or fewer shareholders may dispense with or limit the authority of a board of directors by describing in its articles of incorporation who will perform some or all of the duties of a board of directors.

History. Acts 1987, No. 958, § 64-801.

CASE NOTES

Fiduciary Duty.

Although this subchapter does not specifically address the fiduciary duty of a manager, a manager owes a fiduciary duty

to his business. Pennington v. Harvest Foods, Inc., 326 Ark. 704, 934 S.W.2d 485 (1996).

4-27-802. Qualifications of directors.

The articles of incorporation or bylaws may prescribe qualifications for directors. A director need not be a resident of this state or a shareholder of the corporation unless the articles of incorporation or bylaws so prescribe.

History. Acts 1987, No. 958, § 64-802.

4-27-803. Number and election of directors.

(a) A board of directors must consist of one (1) or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

(b) If a board of directors has power to fix or change the number of directors, the board may increase or decrease by thirty percent (30%) or less the number of directors last approved by the shareholders, but only the shareholders may increase or decrease by more than thirty percent (30%) the number of directors last approved by the shareholders.

(c) The articles of incorporation or bylaws may establish a variable range for the size of the board of directors by fixing a minimum and maximum number of directors. If a variable range is established, the number of directors may be fixed or changed from time to time, within the minimum and maximum, by the shareholders or the board of directors. After shares are issued, only the shareholders may change the range for the size of the board or change from a fixed to a variable-range size board or vice versa.

(d) Directors are elected at the first annual shareholders' meeting and at each annual meeting thereafter unless their terms are staggered under § 4-27-806.

History. Acts 1987, No. 958, § 64-803.

4-27-804. Election of directors by certain classes of shareholders.

If the articles of incorporation authorize dividing the shares into classes, the articles may also authorize the election of all or a specified number of directors by the holders of one (1) or more authorized classes of shares. A class (or classes) of shares entitled to elect one (1) or more directors is a separate voting group for purposes of the election of directors.

History. Acts 1987, No. 958, § 64-804.

4-27-805. Terms of directors generally.

(a) The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

(b) The terms of all other directors expire at the next annual shareholders' meeting following their election unless their terms are staggered under § 4-27-806.

(c) A decrease in the number of directors does not shorten an incumbent director's term.

(d) The term of a director elected to fill a vacancy expires at the next shareholders' meeting at which directors are elected.

(e) Despite the expiration of a director's term, he continues to serve until his successor is elected and qualifies or until there is a decrease in the number of directors.

History. Acts 1987, No. 958, § 64-805.

4-27-806. Staggered terms for directors.

If there are nine (9) or more directors, the articles of incorporation may provide for staggering their terms by dividing the total number of directors into two (2) or three (3) groups, with each group containing one-half ($\frac{1}{2}$) or one-third ($\frac{1}{3}$) of the total, as near as may be. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be chosen for a term of two (2) years or three (3) years, as the case may be, to succeed those whose terms expire.

History. Acts 1987, No. 958, § 64-806.

4-27-807. Resignation of directors.

(a) A director may resign at any time by delivering written notice to the board of directors, its chairman, or to the corporation.

(b) A resignation is effective when the notice is delivered unless the notice specifies a later effective date.

History. Acts 1987, No. 958, § 64-807.

4-27-808. Removal of directors by shareholders.

(a) The shareholders may remove one (1) or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

(b) If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove him.

(c) If cumulative voting is authorized, a director may not be removed if the number of votes sufficient to elect him under cumulative voting is voted against his removal. If cumulative voting is not authorized, a

director may be removed only if the number of votes cast to remove him exceeds the number of votes cast not to remove him.

(d) A director may be removed by the shareholders only at a meeting called for the purpose of removing him and the meeting notice must state that the purpose, or one (1) of the purposes, of the meeting is removal of the director.

History. Acts 1987, No. 958, § 64-808.

4-27-809. Removal of directors by judicial proceeding.

(a) The circuit court of the county where a corporation's principal office (or, if none in this state, its registered office) is located may remove a director of the corporation from office in a proceeding commenced either by the corporation or by its shareholder holding at least ten percent (10%) of the outstanding shares of any class if the court finds that (1) the director engaged in fraudulent or dishonest conduct, or gross abuse of authority or discretion, with respect to the corporation and (2) removal is in the best interest of the corporation.

(b) The court that removes a director may bar the director from reelection for a period prescribed by the court.

(c) If shareholders commence a proceeding under subsection (a) of this section, they shall make the corporation a party defendant.

History. Acts 1987, No. 958, § 64-809.

4-27-810. Vacancy on board.

(a) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(1) the shareholders may fill the vacancy;

(2) the board of directors may fill the vacancy; or

(3) if the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(b) If the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group are entitled to vote to fill the vacancy if it is filled by the shareholders.

(c) A vacancy that will occur at a specific later date (by reason of a resignation effective at a later date under § 4-27-807(b) or otherwise) may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

History. Acts 1987, No. 958, § 64-810.

4-27-811. Compensation of directors.

Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

History. Acts 1987, No. 958, § 64-811.

RESEARCH REFERENCES

Ark. L. Rev. Note, Hall v. Staha: Arkansas Courts Adopt the Business Judgment Rule as a Tool of Judicial Review and Analyze the Issue of Excessive Executive Compensation, 47 Ark. L. Rev. 959.

4-27-812 — 4-27-819. [Reserved.]

Part B: Meetings and Action of the Board

4-27-820. Meetings.

(a) The board of directors may hold regular or special meetings in or out of this state.

(b) Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

History. Acts 1987, No. 958, § 64-812.

4-27-821. Action without meeting.

(a) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this chapter to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one (1) or more written consents describing the action taken, signed by each director, and included in the minutes or filed with the corporate records reflecting the action taken.

(b) Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date.

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

History. Acts 1987, No. 958, § 64-813.

4-27-822. Notice of meeting.

(a) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.

(b) Unless the articles of incorporation or bylaws provide for a longer or shorter period, a special meeting of the board of directors must be preceded by at least two (2) days' notice of the date, time, and place of

the meeting. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

History. Acts 1987, No. 958, § 64-814.

4-27-823. Waiver of notice.

(a) A director may waive any notice required by this chapter, the articles of incorporation, or bylaws before or after the date and time stated in the notice. Except as provided by subsection (b) of this section, the waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes or corporate records.

(b) A director's attendance at or participation in a meeting waives any required notice to him of the meeting unless the director at the beginning of the meeting (or promptly upon his arrival) objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

History. Acts 1987, No. 958, § 64-815.

4-27-824. Quorum and voting.

(a) Unless the articles of incorporation or bylaws require a greater number, a quorum of a board of directors consists of:

(1) a majority of the fixed number of directors if the corporation has a fixed board size; or

(2) a majority of the number of directors prescribed, or if no number is prescribed the number in office immediately before the meeting begins, if the corporation has a variable-range size board.

(b) The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than one-third ($\frac{1}{3}$) of the fixed or prescribed number of directors determined under subsection (a) of this section.

(c) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

(d) A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless: (1) he objects at the beginning of the meeting (or promptly upon his arrival) to holding it or transacting business at the meeting; (2) his dissent or abstention from the action taken is entered in the minutes of the meeting; or (3) he delivers written notice of his dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken.

History. Acts 1987, No. 958, § 64-816.

CASE NOTES

Cited: In re Hutchins, 216 Bankr. 11
(Bankr. E.D. Ark. 1997).

4-27-825. Committees.

(a) Unless the articles of incorporation or bylaws provide otherwise, a board of directors may create one (1) or more committees and appoint members of the board of directors to serve on them. Each committee must have two (2) or more members, who serve at the pleasure of the board of directors.

(b) The creation of a committee and appointment of members to it must be approved by the greater of (1) a majority of all the directors in office when the action is taken or (2) the number of directors required by the articles of incorporation or bylaws to take action under § 4-27-824.

(c) Sections 4-27-820 — 4-27-824, which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board of directors, apply to committees and their members as well.

(d) To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the authority of the board of directors under § 4-27-801.

(e) A committee may not, however:

- (1) authorize distributions;
- (2) approve or propose to shareholders action that this chapter requires be approved by shareholders;
- (3) fill vacancies on the board of directors or on any of its committees;
- (4) amend articles of incorporation pursuant to § 4-27-1002;
- (5) adopt, amend, or repeal bylaws;
- (6) approve a plan of merger not requiring shareholder approval;
- (7) authorize or approve reacquisition of shares, except according to a formula or method prescribed by the board of directors; or
- (8) authorize or approve the issuance or sale or contract for sale of shares, or determine the designation and relative rights, preferences, and limitations of a class or series of shares, except that the board of directors may authorize a committee (or a senior executive officer of the corporation) to do so within the limits specifically prescribed by the board of directors.

(f) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in § 4-27-830.

History. Acts 1987, No. 958, § 64-817.

RESEARCH REFERENCES

UALR L.J. Arey, Bank Directors' Duties Under the Common Law of Arkansas, 11 UALR L.J. 629.

4-27-826 — 4-27-829. [Reserved.]**Part C: Standards of Conduct****4-27-830. General standards for directors.**

(a) A director shall discharge his duties as a director, including his duties as a member of a committee:

- (1) In good faith;
- (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
- (3) in a manner he reasonably believes to be in the best interests of the corporation.

(b) In discharging his duties a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(1) one (1) or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(2) legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or

(3) a committee of the board of directors of which he is not a member if the director reasonably believes the committee merits confidence.

(c) A director is not acting in good faith if he has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) of this section unwarranted.

(d) A director is not liable for any action taken as a director, or any failure to take any action, if he performed the duties of his office in compliance with this section.

History. Acts 1987, No. 958, § 64-818.

RESEARCH REFERENCES

UALR L.J. Arey, Bank Directors' Duties Under the Common Law of Arkansas, 11 UALR L.J. 629.

CASE NOTES**ANALYSIS**

Attorney-client privilege.
Business-judgment rule.
Closely held corporation.
Jury instructions.
Related business dealings.

Attorney-Client Privilege.

While it is true that a corporation can only act through human beings, and the authority to assert and waive privilege

rests with management, a dissident director is not management; such a director has no authority to frustrate the attorney-corporate client privilege when the privilege is asserted by the corporation, i.e., by the majority of directors. In re Hutchins, 216 Bankr. 11 (Bankr. E.D. Ark. 1997).

Business-Judgment Rule.

Two elements must be satisfied in order for corporate officers to invoke the protec-

tion of the business-judgment rule: first, its protection can only be claimed by disinterested directors whose conduct otherwise meets the test of business judgment; and second, to invoke the rule the directors have a duty to inform themselves of all material information reasonably available to them prior to making a business decision. *Long v. Lampton*, 324 Ark. 511, 922 S.W.2d 692 (1996).

Closely Held Corporation.

A stockholder in a closely held family corporation did not breach his duty to the other shareholders when he gained majority control. *Smith v. Paul*, 317 Ark. 182, 876 S.W.2d 266 (1994).

Jury Instructions.

Trial court erred in instructing the jury that minority shareholders had the bur-

den of proving that corporate director owed them a duty as a fiduciary; the issue of what duty is owed, if any, is always a question of law. *Long v. Lampton*, 324 Ark. 511, 922 S.W.2d 692 (1996).

Related Business Dealings.

Corporation's director breached no fiduciary duty by failing to help minority shareholders comply with the financing portion of a pre-incorporation agreement, in that loyalty and good faith did not compel him to assume that he knew more about minority shareholders' banking relationships than they did, nor that the minority shareholders, who were represented by an attorney in their dealings with bank, needed him to take over negotiations with the bank. *Long v. Lampton*, 324 Ark. 511, 922 S.W.2d 692 (1996).

4-27-831. Director conflict of interest.

(a) A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction is not voidable by the corporation solely because of the director's interest in the transaction if any one of the following is true:

(1) the material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board of directors and the board of directors or committee authorized, approved, or ratified the transaction;

(2) the material facts of the transaction and the director's interest were disclosed or known to the shareholders entitled to vote and they authorized, approved, or ratified the transaction; or

(3) the transaction was fair to the corporation.

(b) For purposes of this section, a director of the corporation has an indirect interest in a transaction and it should be considered by the board of directors of the corporation if:

(1) another entity in which he has a material financial interest or in which he is a general partner is a party to the transaction; or

(2) another entity of which he is a director, officer, or trustee is a party to the transaction.

(c) For purposes of subsection (a)(1) of this section, a conflict of interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the directors on the board of directors (or on the committee) who have no direct or indirect interest in the transaction, but a transaction may not be authorized, approved, or ratified under this section by a single director. If a majority of the directors who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a

vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under subsection (a)(1) of this section if the transaction is otherwise authorized, approved, or ratified as provided in that subsection.

(d) For purposes of subsection (a)(2) of this section, a conflict of interest transaction is authorized, approved, or ratified if it receives the vote of a majority of the shares entitled to be counted under this subsection. Shares owned by or voted under the control of a director who has a direct or indirect interest in the transaction, and shares owned by or voted under the control of an entity described in subsection (b)(1) of this section, may not be counted in a vote of shareholders to determine whether to authorize, approve, or ratify a conflict of interest transaction under subsection (a)(2) of this section. The vote of those shares, however, is counted in determining whether the transaction is approved under other sections of this chapter. A majority of the shares, whether or not present, that are entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

History. Acts 1987, No. 958, § 64-819.

4-27-832. Loans to directors.

(a) Except as provided by subsection (c) of this section, a corporation may not lend money to or guarantee the obligation of a director of the corporation unless:

(1) the particular loan or guarantee is approved by a majority of the votes represented by the outstanding voting shares of all classes, voting as a single voting group, except the votes of shares owned by or voted under the control of the benefited director; or

(2) the corporation's board of directors determines that the loan or guarantee benefits the corporation and either approves the specific loan or guarantee or a general plan authorizing loans and guarantees.

(b) The fact that a loan or guarantee is made in violation of this section does not affect the borrower's liability on the loan.

(c) This section does not apply to loans and guarantees authorized by statute regulating any special class of corporations.

History. Acts 1987, No. 958, § 64-820.

4-27-833. Liability for unlawful distributions.

(a) Unless he complies with the applicable standards of conduct described in § 4-27-830, a director who votes for or assents to a distribution made in violation of this chapter or the articles of incorporation is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating this chapter or the articles of incorporation.

(b) A director held liable for an unlawful distribution under subsection (a) of this section is entitled to contribution:

(1) from every other director who voted for or assented to the distribution without complying with the applicable standards of conduct described in § 4-27-830; and

(2) from each shareholder for the amount the shareholder accepted knowing the distribution was made in violation of this chapter or the articles of incorporation.

History. Acts 1987, No. 958, § 64-821.

4-27-834 — 4-27-839. [Reserved.]

Part D: Officers

4-27-840. Required officers.

(a) A corporation has the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.

(b) A duly appointed officer may appoint one (1) or more officers or assistant officers if authorized by the bylaws or the board of directors.

(c) The bylaws or the board of directors shall delegate to one (1) of the officers responsibility for preparing minutes of the directors' and shareholders' meetings and for authenticating records of the corporation.

(d) The same individual may simultaneously hold more than one (1) office in a corporation.

History. Acts 1987, No. 958, § 64-822.

4-27-841. Duties of officers.

Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of other officers.

History. Acts 1987, No. 958, § 64-823.

CASE NOTES

Cited: *Rogers v. Tudor Ins. Co.*, 325 Ark. 226, 925 S.W.2d 395 (1996).

4-27-842. Standards of conduct for officers.

(a) An officer with discretionary authority shall discharge his duties under that authority:

(1) in good faith;

(2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(3) in a manner he reasonably believes to be in the best interests of the corporation.

(b) In discharging his duties an officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(1) one (1) or more officers or employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented; or

(2) legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence.

(c) An officer is not acting in good faith if he has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) of this section unwarranted.

(d) An officer is not liable for any action taken as an officer, or any failure to take any action, if he performed the duties of his office in compliance with this section.

History. Acts 1987, No. 958, § 64-824.

4-27-843. Resignation and removal of officers.

(a) An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective date. If a resignation is made effective at a later date and the corporation accepts the future effective date, its board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor does not take office until the effective date.

(b) A board of directors may remove any officer at any time with or without cause.

History. Acts 1987, No. 958, § 64-825.

4-27-844. Contract rights of officers.

(a) The appointment of an officer does not itself create contract rights.

(b) An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

History. Acts 1987, No. 958, § 64-826.

4-27-845 — 4-27-849. [Reserved.]

4-27-850. Indemnification of officers, directors, employees, and agents — Insurance.

(a) A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened,

pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the corporation) by reason of the fact that he is or was a director, officer, employee, or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit, or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(b) A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the court of chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court of chancery or such other court shall deem proper.

(c) To the extent that a director, officer, employee, or agent of a corporation has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in subsections (a) and (b) of this section, or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

(d) Any indemnification under subsections (a) and (b) of this section (unless ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination that indemnifica-

tion of the director, officer, employee, or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in subsections (a) and (b) of this section. Such determination shall be made:

(1) by the board of directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit, or proceeding; or

(2) if such a quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion; or

(3) by the stockholders.

(e) Expenses incurred by an officer or director in defending a civil or criminal action, suit, or proceeding may be paid by the corporation in advance of the final disposition of such action, suit, or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the corporation as authorized in this section. Such expenses incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the board of directors deems appropriate.

(f) The indemnification and advancement of expenses provided by or granted pursuant to the other subsections of this section shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office.

(g) A corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability under the provisions of this section.

(h) For purposes of this section, references to "the corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee, or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, shall stand in the same position under the provisions of this section with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

(i) For purposes of this section, references to “other enterprises” shall include employee benefit plans; references to “fines” shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to “serving at the request of the corporation” shall include any service as a director, officer, employee, or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the corporation” as referred to in this section.

(j) The indemnification and advancement of expenses provided by, or granted pursuant to, this section shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors and administrators of such person.

History. Acts 1987, No. 958, § 64-827; cuit courts, Ark. Const. Amend. 80, §§ 6, 1987 (1st Ex. Sess.), No. 11, § 8. 19.

Cross References. Jurisdiction of cir-

SUBCHAPTER 9

[Reserved]

SUBCHAPTER 10 — AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

SECTION.	SECTION.
Part A: Amendment of Articles of Incorporation	4-27-1008. Amendment pursuant to reorganization.
4-27-1001. Authority to amend.	4-27-1009. Effect of amendment.
4-27-1002. Amendment by board of directors.	4-27-1010 — 4-27-1019. [Reserved.]
4-27-1003. Amendment by board of directors and shareholders.	Part B: Amendment of Bylaws
4-27-1004. Voting on amendments by voting groups.	4-27-1020. Amendment of the bylaws by board of directors or shareholders.
4-27-1005. Amendment before issuance of shares.	4-27-1021. Bylaw increasing quorum or voting requirement for shareholders.
4-27-1006. Articles of amendment.	4-27-1022. Bylaw increasing quorum or voting requirement for directors.
4-27-1007. Restated articles of incorporation.	

Part A: Amendment of Articles of Incorporation

4-27-1001. Authority to amend.

(a) A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation or to delete a provision not required in the articles of

incorporation. Whether a provision is required or permitted in the articles of incorporation is determined as of the effective date of the amendment.

(b) A shareholder of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, dividend entitlement, or purpose or duration of the corporation.

History. Acts 1987, No. 958, § 64-1001.

4-27-1002. Amendment by board of directors.

Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one (1) or more amendments to the corporation's articles of incorporation without shareholder action:

(1) to extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;

(2) to delete the names and addresses of the initial directors;

(3) to delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the Secretary of State;

(4) to change each issued and unissued authorized share of an outstanding class into a greater number of whole shares if the corporation has only shares of that class outstanding;

(5) to change the corporate name by substituting the word "corporation", "incorporated", "company", "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd.", for a similar word or abbreviation in the name, or by adding, deleting, or changing a geographical attribution for the name; or

(6) to make any other change expressly permitted by this chapter to be made without shareholder action.

History. Acts 1987, No. 958, § 64-1002.

4-27-1003. Amendment by board of directors and shareholders.

(a) A corporation's board of directors may propose one (1) or more amendments to the articles of incorporation for submission to the shareholders.

(b) For the amendment to be adopted:

(1) the board of directors must recommend the amendment to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the amendment; and

(2) the shareholders entitled to vote on the amendment must approve the amendment as provided in subsection (e) of this section.

(c) The board of directors may condition its submission of the proposed amendment on any basis.

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with § 4-27-705. The notice of meeting must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

(e) Unless this chapter, the articles of incorporation, or the board of directors (acting pursuant to subsection (c) of this section) require a greater vote or a vote by voting groups, the amendment to be adopted must be approved by:

(1) a majority of the votes entitled to be cast on the amendment by any voting group with respect to which the amendment would create dissenters' rights; and

(2) the votes required by §§ 4-27-725 and 4-27-726 by every other voting group entitled to vote on the amendment.

History. Acts 1987, No. 958, § 64-1003.

4-27-1004. Voting on amendments by voting groups.

(a) The holders of the outstanding shares of a class are entitled to vote as a separate voting group (if shareholder voting is otherwise required by this chapter) on a proposed amendment if the amendment would:

(1) increase or decrease the aggregate number of authorized shares of the class;

(2) effect an exchange or reclassification of all or part of the shares of the class into shares of another class;

(3) effect an exchange or reclassification, or create the right of exchange, of all or part of the shares of another class into shares of the class;

(4) change the designation, rights, preferences, or limitations of all or part of the shares of the class;

(5) change the shares of all or part of the class into a different number of shares of the same class;

(6) create a new class of shares having rights or preferences with respect to distributions or to dissolutions that are prior, superior, or substantially equal to the shares of the class;

(7) increase the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions or to dissolutions that are prior, superior, or substantially equal to the shares of the class;

(8) limit or deny an existing preemptive right of all or part of the shares of the class; or

(9) cancel or otherwise affect rights to distributions or dividends that have accumulated but not yet been declared on all or part of the shares of the class.

(b) If a proposed amendment would affect a series of a class of shares in one (1) or more of the ways described in subsection A. of this section, the shares of that series are entitled to vote as a separate voting group on the proposed amendment.

(c) If a proposed amendment that entitles two (2) or more series of shares to vote as separate voting groups under this section would affect those two (2) or more series in the same or a substantially similar way, the shares of all the series so affected must vote together as a single voting group on the proposed amendment.

(d) A class or series of shares is entitled to the voting rights granted by this section although the articles of incorporation provide that the shares are nonvoting shares.

History. Acts 1987, No. 958, § 64-1004.

4-27-1005. Amendment before issuance of shares.

If a corporation has not yet issued shares, its incorporators or board of directors may adopt one (1) or more amendments to the corporation's articles of incorporation.

History. Acts 1987, No. 958, § 64-1005.

4-27-1006. Articles of amendment.

A corporation amending its articles of incorporation shall deliver to the Secretary of State for filing articles of amendment setting forth:

- (1) the name of the corporation;
- (2) the text of each amendment adopted;
- (3) if an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself;
- (4) the date of each amendment's adoption;
- (5) if an amendment was adopted by the incorporators or board of directors without shareholder action, a statement to that effect and that shareholder action was not required;
- (6) if an amendment was approved by the shareholders:
 - (i) the designation, number of outstanding shares, number of votes entitled to be cast by each voting group entitled to vote separately on the amendment, and number of votes of each voting group indisputably represented at the meeting;
 - (ii) either the total number of votes cast for and against the amendment by each voting group entitled to vote separately on the amendment or the total number of undisputed votes cast for the amendment by each voting group and a statement that the number cast for the amendment by each voting group was sufficient for approval by that voting group.

History. Acts 1987, No. 958,
§ 64-1006.

4-27-1007. Restated articles of incorporation.

(a) A corporation's board of directors may restate its articles of incorporation at any time with or without shareholder action.

(b) The restatement may include one (1) or more amendments to the articles. If the restatement includes an amendment requiring shareholder approval, it must be adopted as provided in § 4-27-1003.

(c) If the board of directors submits a restatement for shareholder action, the corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with § 4-27-705. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed restatement and contain or be accompanied by a copy of the restatement that identifies any amendment or other change it would make in the articles.

(d) A corporation restating its articles of incorporation shall deliver to the Secretary of State for filing articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate setting forth:

(1) whether the restatement contains an amendment to the articles requiring shareholder approval and, if it does not, that the board of directors adopted the restatement; or

(2) if the restatement contains an amendment to the articles requiring shareholder approval, the information required by § 4-27-1006.

(e) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

(f) The Secretary of State may certify restated articles of incorporation, as the articles of incorporation currently in effect, without including the certificate information required by subsection (d) of this section.

History. Acts 1987, No. 958, § 64-1007.

4-27-1008. Amendment pursuant to reorganization.

(a) A corporation's articles of incorporation may be amended without action by the board of directors or shareholders to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute if the articles of incorporation after amendment contain only provisions required or permitted by § 4-27-202.

(b) The individual or individuals designated by the court shall deliver to the Secretary of State for filing articles of amendment setting forth:

(1) the name of the corporation;

(2) the text of each amendment approved by the court;

(3) the date of the court's order or decree approving the articles of amendment;

(4) the title of the reorganization proceeding in which the order or decree was entered; and

(5) a statement that the court had jurisdiction of the proceeding under federal statute.

(c) Shareholders of a corporation undergoing reorganization do not have dissenters' rights except as and to the extent provided in the reorganization plan.

(d) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

History. Acts 1987, No. 958, § 64-1008.

4-27-1009. Effect of amendment.

An amendment to articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than shareholders of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

History. Acts 1987, No. 958, § 64-1009.

4-27-1010 — 4-27-1019. [Reserved.]

Part B: Amendment of Bylaws

4-27-1020. Amendment of the bylaws by board of directors or shareholders.

(a) A corporation's board of directors may amend or repeal the corporation's bylaws unless:

(1) the articles of incorporation or this chapter reserve this power exclusively to the shareholders in whole or part; or

(2) the shareholders in amending or repealing a particular bylaw provide expressly that the board of directors may not amend or repeal that bylaw.

(b) A corporation's shareholders may amend or repeal the corporation's bylaws even though the bylaws may also be amended or repealed by its board of directors.

History. Acts 1987, No. 958, § 64-1010.

4-27-1021. Bylaw increasing quorum or voting requirement for shareholders.

(a) If authorized by the articles of incorporation, the shareholders may adopt or amend a bylaw that fixes a greater quorum or voting requirement for shareholders (or voting groups of shareholders) than is required by this chapter. The adoption or amendment of a bylaw that adds, changes, or deletes a greater quorum or voting requirement for shareholders must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

(b) A bylaw that fixes a greater quorum or voting requirement for shareholders under subsection (a) of this section may not be adopted, amended, or repealed by the board of directors.

History. Acts 1987, No. 958, § 64-1011.

4-27-1022. Bylaw increasing quorum or voting requirement for directors.

(a) A bylaw that fixes a greater quorum or voting requirement for the board of directors may be amended or repealed:

- (1) if originally adopted by the shareholders, only by the shareholders;
- (2) if originally adopted by the board of directors, either by the shareholders or by the board of directors.

(b) A bylaw adopted or amended by the shareholders that fixes a greater quorum or voting requirement for the board of directors may provide that it may be amended or repealed only by a specified vote of either the shareholders or the board of directors.

(c) Action by the board of directors under subdivision (a)(2) of this section to adopt or amend a bylaw that changes the quorum or voting requirement for the board of directors must meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

History. Acts 1987, No. 958, § 64-1012.

SUBCHAPTER 11 — MERGER AND SHARE EXCHANGE

- SECTION.
- 4-27-1101. Merger.
 - 4-27-1102. Share exchange.
 - 4-27-1103. Action on plan.
 - 4-27-1104. Merger of subsidiary.
 - 4-27-1105. Articles of merger or share exchange.

- SECTION.
- 4-27-1106. Effect of merger or share exchange.
 - 4-27-1107. Merger or share exchange with foreign corporations.

4-27-1101. Merger.

(a) One (1) or more corporations may merge into another corporation if the board of directors of each corporation adopts and its shareholders (if required by § 4-27-1103) approve a plan of merger.

(b) The plan of merger must set forth:

(1) the name of each corporation planning to merge and the name of the surviving corporation into which each other corporation plans to merge;

(2) the terms and conditions of the merger; and

(3) the manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property in whole or in part.

(c) The plan of merger may set forth:

(1) amendments to the articles of incorporation of the surviving corporation; and

(2) other provisions relating to the merger.

History. Acts 1987, No. 958, § 64-1101.

4-27-1102. Share exchange.

(a) A corporation may acquire all of the outstanding shares of one (1) or more classes or series of another corporation if the board of directors of each corporation adopts and its shareholders (if required by § 4-27-1103) approve the exchange.

(b) The plan of exchange must set forth:

(1) the name of the corporation whose shares will be acquired and the name of the acquiring corporation;

(2) the terms and conditions of the exchange;

(3) the manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring or any other corporation or for cash or other property in whole or in part.

(c) The plan of exchange may set forth other provisions relating to the exchange.

(d) This section does not limit the power of a corporation to acquire all or part of the shares of one (1) or more classes or series of another corporation through a voluntary exchange or otherwise.

History. Acts 1987, No. 958, § 64-1102.

4-27-1103. Action on plan.

(a) After adopting a plan of merger or share exchange, the board of directors of each corporation party to the merger, and the board of directors of the corporation whose shares will be acquired in the share exchange, shall submit the plan of merger (except as provided in subsection (g) of this section) or share exchange for approval by its shareholders.

(b) For a plan of merger or share exchange to be approved:

(1) the board of directors must recommend the plan of merger or share exchange to the shareholders, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the plan; and

(2) the shareholders entitled to vote must approve the plan.

(c) The board of directors may condition its submission of the proposed merger or share exchange on any basis.

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with § 4-27-705. The notice must also state that the purpose, or one (1) of the purposes, of the meeting is to consider the plan of merger or share exchange and contain or be accompanied by a copy or summary of the plan.

(e) Unless this chapter, the articles of incorporation, or the board of directors (acting pursuant to subsection (c) of this section) require a greater vote or a vote by voting groups, the plan of merger or share exchange to be authorized must be approved by each voting group entitled to vote separately on the plan by a majority of all the votes entitled to be cast on the plan by that voting group.

(f) Separate voting by voting groups is required:

(1) on a plan of merger, if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation, would require action by one (1) or more separate voting groups on the proposed amendment under § 4-27-1004;

(2) on a plan of share exchange by each class or series of shares included in the exchange, with each class or series constituting a separate voting group.

(g) Action by the shareholders of the surviving corporation on a plan of merger is not required if:

(1) the articles of incorporation of the surviving corporation will not differ (except for amendments enumerated in § 4-27-1002) from its articles before the merger;

(2) each shareholder of the surviving corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical designations, preferences, limitations, and relative rights, immediately after;

(3) the number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable as a result of the merger (either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger), will not exceed by more than twenty percent (20%) the total number of voting shares of the surviving corporation outstanding immediately before the merger; and

(4) the number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable as a result of the merger (either by the conversion of securities issued

pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger), will not exceed by more than twenty percent (20%) the total number of participating shares outstanding immediately before the merger.

(h) As used in subsection (g) of this section:

(1) "Participating shares" means shares that entitle their holders to participate without limitation in distributions.

(2) "Voting shares" means shares that entitle their holders to vote unconditionally in elections of directors.

(i) After a merger or share exchange is authorized, and at any time before articles of merger or share exchange are filed, the planned merger or share exchange may be abandoned (subject to any contractual rights), without further shareholder action, in accordance with the procedure set forth in the plan of merger or share exchange or, if none is set forth, in the manner determined by the board of directors.

History. Acts 1987, No. 958, § 64-1103.

4-27-1104. Merger of subsidiary.

(a) A parent corporation owning at least ninety percent (90%) of the outstanding shares of each class of a subsidiary corporation may merge the subsidiary into itself without approval of the shareholders of the parent or subsidiary.

(b) The board of directors of the parent shall adopt a plan of merger that sets forth:

(1) the names of the parent and subsidiary; and

(1) the manner and basis of converting the shares of the subsidiary into shares, obligations, or other securities of the parent or any other corporation or into cash or other property in whole or in part.

(c) The parent shall mail a copy or summary of the plan of merger to each shareholder of the subsidiary who does not waive the mailing requirement in writing.

(d) The parent may not deliver articles of merger to the Secretary of State for filing until at least thirty (30) days after the date it mailed a copy of the plan of merger to each shareholder of the subsidiary who did not waive the mailing requirement.

(e) Articles of merger under this section may not contain amendments to the articles of incorporation of the parent corporation (except for amendments enumerated in § 4-27-1002).

History. Acts 1987, No. 958, § 64-1104.

4-27-1105. Articles of merger or share exchange.

(a) After a plan of merger or share exchange is approved by the shareholders, or adopted by the board of directors if shareholder approval is not required, the surviving or acquiring corporation shall

deliver to the Secretary of State for filing articles of merger or share exchange setting forth:

- (1) the plan of merger or share exchange;
- (2) if shareholder approval was not required, a statement to that effect;
- (3) if approval of the shareholders of one (1) or more corporations party to the merger or share exchange was required:
 - (i) the designation, number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on the plan as to each corporation; and
 - (ii) either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group.
- (b) A merger or share exchange takes effect upon the effective date of the articles of merger or share exchange.

History. Acts 1987, No. 958, § 64-1105.

4-27-1106. Effect of merger or share exchange.

- (a) When a merger takes effect:
 - (1) every other corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases;
 - (2) the title to all real estate and other property owned by each corporation party to the merger is vested in the surviving corporation without reversion or impairment;
 - (3) the surviving corporation has all liabilities of each corporation party to the merger;
 - (4) a proceeding pending against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased;
 - (5) the articles of incorporation of the surviving corporation are amended to the extent provided in the plan of merger; and
 - (6) the shares of each corporation party to the merger that are to be converted into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property are converted, and the former holders of the shares are entitled only to the rights provided in the articles of merger or to their rights under § 4-27-1301 et seq.
- (b) When a share exchange takes effect, the shares of each acquired corporation are exchanged as provided in the plan, and the former holders of the shares are entitled only to the exchange rights provided in the articles of share exchange or to their rights under § 4-27-1301 et seq.

History. Acts 1987, No. 958, § 64-1106; 1987 (1st Ex. Sess.), No. 11, § 9.

4-27-1107. Merger or share exchange with foreign corporations.

(a) One (1) or more foreign corporations may merge or enter into a share exchange with one (1) or more domestic corporations if:

(1) in a merger, the merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger;

(2) in a share exchange, the corporation whose shares will be acquired is a domestic corporation, whether or not a share exchange is permitted by the law of the state or country under whose law the acquiring corporation is incorporated;

(3) the foreign corporation complies with § 4-27-1105 if it is the surviving corporation of the merger or acquiring corporation of the share exchange; and

(4) each domestic corporation complies with the applicable provisions of §§ 4-27-1101 — 4-27-1104 and, if it is the surviving corporation of the merger or acquiring corporation of a share exchange, with § 4-27-1105.

(b) Upon the merger or share exchange taking effect, the surviving foreign corporation of a merger and the acquiring foreign corporation of a share exchange is deemed:

(1) to appoint the Secretary of State as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic corporation party to the merger or share exchange; and

(2) to agree that it will promptly pay to the dissenting shareholders of each domestic corporation party to the merger or share exchange the amount, if any, to which they are entitled under § 4-27-1301 et seq.

(c) This section does not limit the power of a foreign corporation to acquire all or part of the shares of one (1) or more classes or series of a domestic corporation through a voluntary exchange or otherwise.

History. Acts 1987, No. 958, § 64-1107.

SUBCHAPTER 12 — SALE OF ASSETS

SECTION.

4-27-1201. Sale of assets in regular course of business and mortgage of assets.

SECTION.

4-27-1202. Sale of assets other than in regular course of business.

4-27-1201. Sale of assets in regular course of business and mortgage of assets.

(a) A corporation may, on the terms and conditions and for the consideration determined by the board of directors:

(1) sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property in the usual and regular course of business;

(2) mortgage, pledge, dedicate to the repayment of indebtedness (whether with or without recourse), or otherwise encumber any or all of its property whether or not in the usual and regular course of business; or

(3) transfer any or all of its property to a corporation all the shares of which are owned by the corporation.

(b) Unless the articles of incorporation or another provision of this chapter so require, approval by the shareholders of a transaction described in subsection (a) of this section is not required.

History. Acts 1987, No. 958, § 64-1201.

4-27-1202. Sale of assets other than in regular course of business.

(a) A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property (with or without the good will), otherwise than in the usual and regular course of business, on the terms and conditions and for the consideration determined by the corporation's board of directors, if the board of directors proposes and its shareholders approve the proposed transaction.

(b) For a transaction to be authorized:

(1) the board of directors must recommend the proposed transaction to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the submission of the proposed transaction; and

(2) the shareholders entitled to vote must approve the transaction.

(c) The board of directors may condition its submission of the proposed transaction on any basis.

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with § 4-27-705. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, the property of the corporation and contain or be accompanied by a description of the transaction.

(e) Unless the articles of incorporation or the board of directors (acting pursuant to subsection (c) of this section) require a greater vote or a vote by voting groups, the transaction to be authorized must be approved by a majority of all the votes entitled to be cast on the transaction.

(f) After a sale, lease, exchange, or other disposition of property is authorized, the transaction may be abandoned (subject to any contractual rights) without further shareholder action.

(g) A transaction that constitutes a distribution is governed by § 4-27-640 and not by this section.

History. Acts 1987, No. 958, § 64-1202.

SUBCHAPTER 13 — DISSENTERS' RIGHTS

SECTION.

Part A: Right to Dissent and Obtain Payment for Shares

- 4-27-1301. Definitions.
- 4-27-1302. Right of dissent.
- 4-27-1303. Dissent by nominees and beneficial owners.
- 4-27-1304 — 4-27-1319. [Reserved.]

Part B: Procedure for Exercise of Dissenters' Rights

- 4-27-1320. Notice of dissenters' rights.
- 4-27-1321. Notice of intent to demand payment.
- 4-27-1322. Dissenters' notice.

SECTION.

- 4-27-1323. Duty to demand payment.
- 4-27-1324. Share restrictions.
- 4-27-1325. Payment.
- 4-27-1326. Failure to take action.
- 4-27-1327. After-acquired shares.
- 4-27-1328. Procedure if shareholder dissatisfied with payment or offer.
- 4-27-1329. [Reserved.]

Part C: Judicial Appraisal of Shares

- 4-27-1330. Court action.
- 4-27-1331. Court costs and counsel fees.

Part A: Right to Dissent and Obtain Payment for Shares

4-27-1301. Definitions.

In this subchapter:

(1) "Corporation" means the issuer of the shares held by a dissenter before the corporate action, or the surviving or acquiring corporation by merger or share exchange of that issuer.

(2) "Dissenter" means a shareholder who is entitled to dissent from corporate action under § 4-27-1302 and who exercises that right when and in the manner required by §§ 4-27-1320 — 4-27-1328.

(3) "Fair value", with respect to a dissenter's shares, means the value of the shares immediately before the effectuation of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be inequitable.

(4) "Interest" means interest from the effective date of the corporate action until the date of payment, at the average rate currently paid by the corporation on its principal bank loans or, if none, at a rate that is fair and equitable under all the circumstances.

(5) "Record shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

(6) "Beneficial shareholder" means the person who is a beneficial owner of shares held in a voting trust or by a nominee as the record shareholder.

(7) "Shareholder" means the record shareholder or the beneficial shareholder.

History. Acts 1987, No. 958, § 64-1301; 1987 (1st Ex. Sess.), No. 11, § 10.

4-27-1302. Right of dissent.

(a) A shareholder is entitled to dissent from and obtain payment of the fair value of his shares in the event of any of the following corporate actions:

(1) consummation of a plan of merger to which the corporation is a party (i) if shareholder approval is required for the merger by § 4-27-1103 or the articles of incorporation and the shareholder is entitled to vote on the merger or (ii) if the corporation is a subsidiary that is merged with its parent under § 4-27-1104;

(2) consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to vote on the plan;

(3) consummation of a sale or exchange of all, or substantially all, of the property of the corporation other than in the usual and regular course of business, if the shareholder is entitled to vote on the sale or exchange, including a sale in dissolution, but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within one (1) year after the date of sale;

(4) an amendment of the articles of incorporation that materially and adversely affects rights in respect of a dissenter's shares because it:

(i) alters or abolishes a preferential right of the shares;

(ii) creates, alters, or abolishes a right in respect of redemption, including a provision respecting a sinking fund for the redemption or repurchase, of the shares;

(iii) alters or abolishes a preemptive right of the holder of the shares to acquire shares or other securities;

(iv) excludes or limits the right of the shares to vote on any matter, or to cumulate votes, other than a limitation by dilution through issuance of shares or other securities with similar voting rights; or

(v) reduces the number of shares owned by the shareholder to a fraction of a share if the fractional share so created is to be acquired for cash under § 4-27-604; or

(5) any corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares.

(b) A shareholder entitled to dissent and obtain payment for his shares under this subchapter may not challenge the corporate action creating his entitlement unless the action is unlawful or fraudulent with respect to the shareholder or the corporation.

History. Acts 1987, No. 958, § 64-1302; 1987 (1st Ex. Sess.), No. 11, § 11.

4-27-1303. Dissent by nominees and beneficial owners.

(a) A record shareholder may assert dissenters' rights as to fewer than all the shares registered in his name only if he dissents with respect to all shares beneficially owned by any one (1) person and notifies the corporation in writing of the name and address of each person on whose behalf he asserts dissenters' rights. The rights of a partial dissenter under this subsection are determined as if the shares as to which he dissents and his other shares were registered in the names of different shareholders.

(b) A beneficial shareholder may assert dissenters' rights as to shares held on his behalf only if:

(1) he submits to the corporation the record shareholder's written consent to the dissent not later than the time the beneficial shareholder asserts dissenters' rights; and

(2) he does so with respect to all shares of which he is the beneficial shareholder or over which he has power to direct the vote.

History. Acts 1987, No. 958, § 64-1303.

4-27-1304 — 4-27-1319. [Reserved.]

Part B: Procedure for Exercise of Dissenters' Rights

4-27-1320. Notice of dissenters' rights.

(a) If proposed corporate action creating dissenters' rights under § 4-27-1302 is submitted to a vote at a shareholders' meeting, the meeting notice must state that shareholders are or may be entitled to assert dissenters' rights under this chapter and be accompanied by a copy of this chapter.

(b) If corporate action creating dissenters' rights under § 4-27-1302 is taken without a vote of shareholders, the corporation shall notify in writing all shareholders entitled to assert dissenters' rights that the action was taken and send them the dissenters' notice described in § 4-27-1322.

History. Acts 1987, No. 958, § 64-1304.

4-27-1321. Notice of intent to demand payment.

(a) If proposed corporate action creating dissenters' rights under § 4-27-1302 is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert dissenters' rights (1) must deliver to the corporation before the vote is taken written notice of his intent to

demand payment for his shares if the proposed action is effectuated and (2) must not vote his shares in favor of the proposed action.

(b) A shareholder who does not satisfy the requirements of subsection (a) of this section is not entitled to payment for his shares under this subchapter.

History. Acts 1987, No. 958, § 64-1305.

4-27-1322. Dissenters' notice.

(a) If proposed corporate action creating dissenters' rights under § 4-27-1302 is authorized at a shareholders' meeting, the corporation shall deliver a written dissenters' notice to all shareholders who satisfied the requirements of § 4-27-1321.

(b) The dissenters' notice must be sent no later than ten (10) days after the corporate action was taken, and must:

(1) state where the payment demand must be sent and where and when certificates for certificated shares must be deposited;

(2) inform holders of uncertificated shares to what extent transfer of the shares will be restricted after the payment demand is received;

(3) supply a form for demanding payment that includes the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action and requires that the person asserting dissenters' rights certify whether or not he acquired beneficial ownership of the shares before that date;

(4) set a date by which the corporation must receive the payment demand, which date may not be fewer than thirty (30) nor more than sixty (60) days after the date subsection (a) the notice is delivered; and

(5) be accompanied by a copy of this subchapter.

History. Acts 1987, No. 958, § 64-1306.

4-27-1323. Duty to demand payment.

(a) A shareholder sent a dissenters' notice described in § 4-27-1322 must demand payment, certify whether he acquired beneficial ownership of the shares before the date required to be set forth in the dissenters' notice pursuant to § 4-27-1322(b)(3), and deposit his certificates in accordance with the terms of the notice.

(b) The shareholder who demands payment and deposits his share certificates under subsection (a) of this section retains all other rights of a shareholder until these rights are cancelled or modified by the taking of the proposed corporate action.

(c) A shareholder who does not demand payment or deposit his share certificates where required, each by the date set in the dissenters' notice, is not entitled to payment for his shares under this subchapter.

History. Acts 1987, No. 958, § 64-1307.

4-27-1324. Share restrictions.

(a) The corporation may restrict the transfer of uncertificated shares from the date the demand for their payment is received until the proposed corporate action is taken or the restrictions released under § 4-27-1326.

(b) The person for whom dissenters' rights are asserted as to uncertificated shares retains all other rights of a shareholder until these rights are cancelled or modified by the taking of the proposed corporate action.

History. Acts 1987, No. 958, § 64-1308.

4-27-1325. Payment.

(a) Except as provided in § 4-27-1327, as soon as the proposed corporate action is taken, or upon receipt of a payment demand, the corporation shall pay each dissenter who complied with § 4-27-1323 the amount the corporation estimates to be the fair value of his shares, plus accrued interest.

(b) The payment must be accompanied by:

(1) the corporation's balance sheet as of the end of a fiscal year ending not more than sixteen (16) months before the date of payment, an income statement for that year, a statement of changes in shareholders' equity for that year, and the latest available interim financial statements, if any;

(2) a statement of the corporation's estimate of the fair value of the shares;

(3) an explanation of how the interest was calculated;

(4) a statement of the dissenter's right to demand payment under § 4-27-1328; and

(5) a copy of this subchapter.

History. Acts 1987, No. 958, § 64-1309.

4-27-1326. Failure to take action.

(a) If the corporation does not take the proposed action within sixty (60) days after the date set for demanding payment and depositing share certificates, the corporation shall return the deposited certificates and release the transfer restrictions imposed on uncertificated shares.

(b) If after returning deposited certificates and releasing transfer restrictions, the corporation takes the proposed action, it must send a new dissenters' notice under § 4-27-1322 and repeat the payment demand procedure.

History. Acts 1987, No. 958,
§ 64-1310.

4-27-1327. After-acquired shares.

(a) A corporation may elect to withhold payment required by § 4-27-1325 from a dissenter unless he was the beneficial owner of the shares before the date set forth in the dissenters' notice as the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action.

(b) To the extent the corporation elects to withhold payment under subsection (a) of this section, after taking the proposed corporate action, it shall estimate the fair value of the shares, plus accrued interest, and shall pay this amount to each dissenter who agrees to accept it in full satisfaction of his demand. The corporation shall send with its offer a statement of its estimate of the fair value of the shares, an explanation of how the interest was calculated, and a statement of the dissenter's right to demand payment under § 4-27-1328.

History. Acts 1987, No. 958, § 64-1311.

4-27-1328. Procedure if shareholder dissatisfied with payment or offer.

(a) A dissenter may notify the corporation in writing of his own estimate of the fair value of his shares and amount of interest due, and demand payment of his estimate (less any payment under § 4-27-1325), or reject the corporation's offer under § 4-27-1327 and demand payment of the fair value of his shares and interest due, if:

(1) the dissenter believes that the amount paid under § 4-27-1325 or offered under § 4-27-1327 is less than the fair value of his shares or that the interest due is incorrectly calculated;

(2) the corporation fails to make payment under § 4-27-1325 within sixty (60) days after the date set for demanding payment; or

(3) the corporation, having failed to take the proposed action, does not return the deposited certificates or release the transfer restrictions imposed on uncertificated shares within sixty (60) days after the date set for demanding payment.

(b) A dissenter waives his right to demand payment under this section unless he notifies the corporation of his demand in writing under subsection (a) of this section within thirty (30) days after the corporation made or offered payment for his shares.

History. Acts 1987, No. 958, § 64-1312.

4-27-1329. [Reserved.]**Part C: Judicial Appraisal of Shares****4-27-1330. Court action.**

(a) If a demand for payment under § 4-27-1328 remains unsettled, the corporation shall commence a proceeding within sixty (60) days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the sixty-day period, it shall pay each dissenter whose demand remains unsettled the amount demanded.

(b) The corporation shall commence the proceeding in the circuit court of the county where the corporation's principal office (or, if none in this state, its registered office) is located. If the corporation is a foreign corporation without a registered office in this state, it shall commence the proceeding in the county in this state where the registered office of the domestic corporation merged with or whose shares were acquired by the foreign corporation was located.

(c) The corporation shall make all dissenters (whether or not residents of this state) whose demands remain unsettled parties to the proceeding as in an action against their shares and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(d) The jurisdiction of the court in which the proceeding is commenced under subsection (b) of this section is plenary and exclusive. The court may appoint one (1) or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the powers described in the order appointing them, or in any amendment to it. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

(e) Each dissenter made a party to the proceeding is entitled to judgment (1) for the amount, if any, by which the court finds the fair value of his shares, plus interest, exceeds the amount paid by the corporation or (2) for the fair value, plus accrued interest, of his after-acquired shares for which the corporation elected to withhold payment under § 4-27-1327.

History. Acts 1987, No. 958, § 64-1313.

4-27-1331. Court costs and counsel fees.

(a) The court in an appraisal proceeding commenced under § 4-27-1330 shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the corporation, except that the court may assess costs against all or some of the dissenters, in amounts the court finds equitable, to the extent the court finds the dissenters

acted arbitrarily, vexatiously, or not in good faith in demanding payment under § 4-27-1328.

(b) The court may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

(1) against the corporation and in favor of any or all dissenters if the court finds the corporation did not substantially comply with the requirements of §§ 4-27-1320 — 4-27-1328; or

(2) against either the corporation or a dissenter, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this chapter.

(c) If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated, and that the fees for those services should not be assessed against the corporation, the court may award to these counsel reasonable fees to be paid out of the amounts awarded the dissenters who were benefited.

History. Acts 1987, No. 958, § 64-1314.

SUBCHAPTER 14 — DISSOLUTION

SECTION.

Part A: Voluntary Dissolution

4-27-1401. Dissolution by incorporators or initial directors.

4-27-1402. Dissolution by board of directors and shareholders.

4-27-1403. Articles of dissolution.

4-27-1404. Revocation of dissolution.

4-27-1405. Effect of dissolution.

4-27-1406. Known claims against dissolved corporation.

4-27-1407. Unknown claims against dissolved corporation.

4-27-1408 — 4-27-1419. [Reserved.]

Part B: Administrative Dissolution

4-27-1420. Grounds for administrative dissolution.

4-27-1421. Procedure for and effect of administrative dissolution.

SECTION.

4-27-1422. Reinstatement following administrative dissolution.

4-27-1423. Appeal from denial of reinstatement.

4-27-1424 — 4-27-1429. [Reserved.]

Part C: Judicial Dissolution

4-27-1430. Grounds for judicial dissolution.

4-27-1431. Procedure for judicial dissolution.

4-27-1432. Receivership or custodianship.

4-27-1433. Decree of dissolution.

4-27-1434 — 4-27-1439. [Reserved.]

Part D: Miscellaneous

4-27-1440. Deposit with Treasurer of State.

Part A: Voluntary Dissolution

4-27-1401. Dissolution by incorporators or initial directors.

A majority of the incorporators or initial directors of a corporation that has not issued shares or has not commenced business may dissolve the corporation by delivering to the Secretary of State for filing articles of dissolution that set forth:

(1) the name of the corporation;

- (2) the date of its incorporation;
- (3) either (i) that none of the corporation's shares has been issued or (ii) that the corporation has not commenced business;
- (4) that no debt of the corporation remains unpaid;
- (5) that the net assets of the corporation remaining after winding up have been distributed to the shareholders, if shares were issued; and
- (6) that a majority of the incorporators or initial directors authorized the dissolution.

History. Acts 1987, No. 958, § 64-1401.

4-27-1402. Dissolution by board of directors and shareholders.

(a) A corporation's board of directors may propose dissolution for submission to the shareholders.

(b) For a proposal to dissolve to be adopted:

(1) the board of directors must recommend dissolution to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders; and

(2) the shareholders entitled to vote must approve the proposal to dissolve as provided in subsection (e) of this section.

(c) The board of directors may condition its submission of the proposal for dissolution on any basis.

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with § 4-27-705. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.

(e) Unless the articles of incorporation or the board of directors (acting pursuant to subsection (c) of this section) require a greater vote or a vote by voting groups, the proposal to dissolve to be adopted must be approved by a majority of all the votes entitled to be cast on that proposal.

History. Acts 1987, No. 958, § 64-1402.

4-27-1403. Articles of dissolution.

(a) At any time after dissolution is authorized, the corporation may dissolve by delivering to the Secretary of State for filing articles of dissolution setting forth:

- (1) the name of the corporation;
- (2) the date dissolution was authorized;
- (3) if dissolution was approved by the shareholders:

- (i) the number of votes entitled to be cast on the proposal to dissolve; and

(ii) either the total number of votes cast for and against dissolution or the total number of undisputed votes cast for dissolution and a statement that the number cast for dissolution was sufficient for approval;

(4) if voting by voting groups was required, the information required by subdivision (3) of this subsection must be separately provided for each voting group entitled to vote separately on the plan to dissolve.

(b) A corporation is dissolved upon the effective date of its articles of dissolution.

History. Acts 1987, No. 958, § 64-1403.

4-27-1404. Revocation of dissolution.

(a) A corporation may revoke its dissolution within one hundred twenty (120) days of its effective date.

(b) Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder action.

(c) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the Secretary of State for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

(1) the name of the corporation;

(2) the effective date of the dissolution that was revoked;

(3) the date that the revocation of dissolution was authorized;

(4) if the corporation's board of directors (or incorporators) revoked the dissolution, a statement to that effect;

(5) if the corporation's board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and

(6) if shareholder action was required to revoke the dissolution, the information required by § 4-27-1403(a)(3) or (a)(4).

(d) Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

(e) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its business as if dissolution had never occurred.

History. Acts 1987, No. 958, § 64-1404.

4-27-1405. Effect of dissolution.

(a) A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

- (1) collecting its assets;
- (2) disposing of its properties that will not be distributed in kind to its shareholders;
- (3) discharging or making provision for discharging its liabilities;
- (4) distributing its remaining property among its shareholders according to their interests; and
- (5) doing every other act necessary to wind up and liquidate its business and affairs.

(b) Dissolution of a corporation does not:

- (1) transfer title to the corporation's property;
- (2) prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;
- (3) subject its directors or officers to standards of conduct different from those prescribed in § 4-27-801 et seq.;
- (4) change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws;
- (5) prevent commencement of a proceeding by or against the corporation in its corporate name;
- (6) abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or
- (7) terminate the authority of the registered agent of the corporation.

History. Acts 1987, No. 958, § 64-1405.

4-27-1406. Known claims against dissolved corporation.

(a) A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

(b) The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice must:

- (1) describe information that must be included in a claim;
- (2) provide a mailing address where a claim may be sent;
- (3) state the deadline, which may not be fewer than one hundred twenty (120) days from the effective date of the written notice, by which the dissolved corporation must receive the claim; and
- (4) state that the claim will be barred if not received by the deadline.

(c) A claim against the dissolved corporation is barred:

- (1) if a claimant who was given written notice under subsection B. of this section does not deliver the claim to the dissolved corporation by the deadline;

(2) if a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within ninety (90) days from the effective date of the rejection notice.

(d) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

History. Acts 1987, No. 958, § 64-1406.

4-27-1407. Unknown claims against dissolved corporation.

(a) A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.

(b) The notice must:

(1) be published one (1) time in a newspaper of general circulation in the county where the dissolved corporation's principal office (or, if none in this state, its registered office) is or was last located;

(2) describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(3) state that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within five (5) years after the publication of the notice.

(c) If the dissolved corporation publishes a newspaper notice in accordance with subsection (b) of this section, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within five (5) years after the publication date of the newspaper notice:

(1) a claimant who did not receive written notice under § 4-27-1406;

(2) a claimant whose claim was timely sent to the dissolved corporation but not acted on;

(3) a claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(d) A claim may be enforced under this section:

(1) against the dissolved corporation, to the extent of its undistributed assets; or

(2) if the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of his pro rata share of the claim or the corporate assets distributed to him in liquidation, whichever is less, but a shareholder's total liability for all claims under this section may not exceed the total amount of assets distributed to him.

History. Acts 1987, No. 958, § 64-1407; 1987 (1st Ex. Sess.), No. 11, § 12.

4-27-1408 — 4-27-1419. [Reserved.]**Part B: Administrative Dissolution****4-27-1420. Grounds for administrative dissolution.**

The Secretary of State may commence a proceeding under § 4-27-1421 to administratively dissolve a corporation if:

(1) the corporation does not pay within sixty (60) days after they are due any franchise taxes or penalties imposed by this chapter or other law;

(2) the corporation does not deliver its annual franchise tax report to the Secretary of State within sixty (60) days after it is due;

(3) the corporation is without a registered agent or registered office in this state for sixty (60) days or more;

(4) the corporation does not notify the Secretary of State within sixty (60) days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued; or

(5) the corporation's period of duration stated in its articles of incorporation expires.

History. Acts 1987, No. 958, § 64-1408.

RESEARCH REFERENCES

Ark. L. Notes. Flaccus, A Grab Bag of Recent Arkansas Cases, 1999 Ark. L. Notes 25.

CASE NOTES**Corporation with Forfeited Charter.**

This section, §§ 26-54-110 and 26-54-112 presuppose that a corporation whose charter has been forfeited has not yet been dissolved, and since a corporation with a

forfeited charter has not been dissolved, the corporation continues to exist for limited purposes. *Gibson v. Dennis* (In re Russell), 123 Bankr. 48 (Bankr. W.D. Ark. 1990).

4-27-1421. Procedure for and effect of administrative dissolution.

(a) If the Secretary of State determines that one (1) or more grounds exist under § 4-27-1420 for dissolving a corporation, he shall serve the corporation with written notice of his determination under § 4-27-504.

(b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days after service of the notice is perfected under § 4-27-504, the Secretary of State shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary

of State shall file the original of the certificate and serve a copy on the corporation under § 4-27-504.

(c) A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under § 4-27-1405 and notify claimants under §§ 4-27-1406 and 4-27-1407.

(d) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

History. Acts 1987, No. 958, § 64-1409.

4-27-1422. Reinstatement following administrative dissolution.

(a) A corporation administratively dissolved under § 4-27-1421 may apply to the Secretary of State for reinstatement within two (2) years after the effective date of dissolution. The application must:

(1) recite the name of the corporation and the effective date of its administrative dissolution;

(2) state that the ground or grounds for dissolution either did not exist or have been eliminated;

(3) state that the corporation's name satisfies the requirements of § 4-27-401; and

(4) contain one (1) or more certificates from appropriate state taxing authorities reciting that all taxes owed by the corporation have been paid.

(b) If the Secretary of State determines that the application contains the information required by subsection (a) of this section and that the information is correct, he shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites his determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under § 4-27-504.

(c) When the reinstatement is effective, it relates back to and takes effect as of the date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred.

History. Acts 1987, No. 958, § 64-1410.

CASE NOTES

Cited: Larzelere v. Reed, 35 Ark. App. 174, 816 S.W.2d 614 (1991).

4-27-1423. Appeal from denial of reinstatement.

(a) If the Secretary of State denies a corporation's application for reinstatement following administrative dissolution, he shall serve the corporation under § 4-27-504 with a written notice that explains the reason or reasons for denial.

(b) The corporation may appeal the denial of reinstatement to the Pulaski County Circuit Court within thirty (30) days after service of the notice of denial is perfected. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the Secretary of State's certificate of dissolution, the corporation's application for reinstatement, and the Secretary of State's notice of denial.

(c) The court may summarily order the Secretary of State to reinstate the dissolved corporation or may take other action the court considers appropriate.

(d) The court's final decision may be appealed as in other civil proceedings.

History. Acts 1987, No. 958, § 64-1411.

4-27-1424 — 4-27-1429. [Reserved.]

Part C: Judicial Dissolution

4-27-1430. Grounds for judicial dissolution.

The Pulaski County Circuit Court, in the case of a proceeding brought by the Attorney General, or the circuit court of the county in which the corporation's principal office (or, if none in this state, its registered office) is located in the case of a proceeding brought by a shareholder, may dissolve a corporation:

(1) in a proceeding by the Attorney General, if it is established that:

(i) the corporation obtained its articles of incorporation through fraud; or

(ii) the corporation has continued to exceed or abuse the authority conferred upon it by law;

(2) In a proceeding by a shareholder, if it is established that:

(i) the directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock;

(ii) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(iii) the shareholders are deadlocked in voting power and have failed, for a period that includes at least two (2) consecutive annual meeting dates, to elect successors to directors whose terms have expired; or

(iv) the corporate assets are being misapplied or wasted;

(3) In a proceeding by a creditor, if it is established that:

(i) the creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or

(ii) the corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or

(4) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

History. Acts 1987, No. 958, § 64-1412.

Publisher's Notes. Acts 1993, No. 444, § 2, provided: "The General Assembly determines that Arkansas Code § 4-

25-104 is no longer necessary and should be repealed as to dissolution of insolvent corporations is now comprehensively covered by Arkansas Code §§ 4-26-1108, 4-27-1430 and 4-59-201 et seq."

4-27-1431. Procedure for judicial dissolution.

(a) Venue for a proceeding by the Attorney General to dissolve a corporation lies in the Pulaski County Circuit Court. Venue for a proceeding brought by any other party named in § 4-27-1430 lies in the county where a corporation's principal office (or, if none in this state, its registered office) is or was last located.

(b) It is not necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(c) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

History. Acts 1987, No. 958, § 64-1413; 1987 (1st Ex. Sess.), No. 11, § 13.

4-27-1432. Receivership or custodianship.

(a) A court in a judicial proceeding brought to dissolve a corporation may appoint one (1) or more receivers to wind up and liquidate, or one (1) or more custodians to manage, the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of its property wherever located.

(b) The court may appoint an individual or a domestic or foreign corporation (authorized to transact business in this state) as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(c) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(1) the receiver (i) may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court; and (ii) may sue and defend in his own name as receiver of the corporation in all courts of this state;

(2) the custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.

(d) The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the corporation, its shareholders, and creditors.

(e) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and his counsel from the assets of the corporation or proceeds from the sale of the assets.

History. Acts 1987, No. 958, § 64-1414.

4-27-1433. Decree of dissolution.

(a) If after a hearing the court determines that one (1) or more grounds for judicial dissolution described in § 4-27-1430 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the Secretary of State, who shall file it.

(b) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with § 4-27-1405 and the notification of claimants in accordance with §§ 4-27-1406 and 4-27-1407.

History. Acts 1987, No. 958, § 64-1415.

4-27-1434 — 4-27-1439. [Reserved.]

Part D: Miscellaneous

4-27-1440. Deposit with Treasurer of State.

Assets of a dissolved corporation that should be transferred to a creditor, claimant, or shareholder of the corporation who cannot be found or who is not competent to receive them shall be reduced to cash and deposited with the Treasurer of State or other appropriate state official for safekeeping. When the creditor, claimant, or shareholder furnishes satisfactory proof of entitlement to the amount deposited, the Treasurer of State or other appropriate state official shall pay him or his representative that amount.

History. Acts 1987, No. 958,
§ 64-1416.

SUBCHAPTER 15 — FOREIGN CORPORATIONS

SECTION.

Part A: Certificate of Authority

- 4-27-1501. Authority to transact business required.
- 4-27-1502. Consequences of transacting business without authority.
- 4-27-1503. Application for certificate of authority.
- 4-27-1504. Amended certificate of authority.
- 4-27-1505. Effect of certificate of authority.
- 4-27-1506. Corporate name of foreign corporation.
- 4-27-1507. Registered office and registered agent of foreign corporation.
- 4-27-1508. Change of registered office or registered agent of foreign corporation.

SECTION.

- 4-27-1509. Resignation of registered agent of foreign corporation.
- 4-27-1510. Service on foreign corporation.
- 4-27-1511 — 4-27-1519. [Reserved.]

Part B: Withdrawal

- 4-27-1520. Withdrawal of foreign corporation.
- 4-27-1521 — 4-27-1529. [Reserved.]

Part C: Revocation of Certificate of Authority

- 4-27-1530. Grounds for revocation.
- 4-27-1531. Procedure for and effect of revocation.
- 4-27-1532. Appeal from revocation.

Cross References. Consolidation of foreign and domestic corporations, § 4-26-1006.

Foreign corporations prohibited from doing business in violation of Automobile Dealer's Anti-Coercion Act, § 4-75-406.

Foreign corporations subject to same regulations, limitations, and liabilities as domestic corporations, Ark. Const., Art. 12, § 11.

RESEARCH REFERENCES

ALR. In personam jurisdiction under long arm statute over nonresident banking institution. 9 ALR 4th 661.

Ownership of land by alien corporation. 21 ALR 4th 1329.

Personal liability of stockholder, officer, or agent for debt of foreign corporation doing business in the state. 27 ALR 4th 387.

Construction, complication, and operation of state retaliatory statutes imposing special taxes or fees on foreign insurers doing business within state. 30 ALR 4th 873.

Personal jurisdiction over nonresident manufacturer of component incorporated in another product. 69 ALR 4th 14.

What constitutes doing business within state for purposes of state closed-door

statute barring unqualified or unregistered foreign corporation from local courts — modern cases. 88 ALR 4th 466.

Application of statute denying access to courts or invalidating contracts where corporation fails to comply with regulatory statute as affected by compliance after commencement of action. 42 ALR 5th 221.

Doing business, place where corporation is doing business for purposes of state venue statute. 42 ALR 5th 221.

Sufficient nexus for state to require foreign entity to collect state's compensating, sales or use tax — post Complete Auto Transit cases. 71 ALR 5th 671.

Am. Jur. 36 Am. Jur. 2d, For. Corp., § 1 et seq.

Ark. L. Rev. Regulation of Nonresident

Lending Money in State, 7 Ark. L. Rev. 374.

Bills and Notes — The Original Payee's Non-Compliance with the Wingo Act as a Defense Against a Holder in Due Course, 25 Ark. L. Rev. 518.

Conflict of Laws: Arkansas, 32 Ark. L. Rev. 1.

Leflar, Conflict of Laws: Arkansas, 1978-82, 36 Ark. L. Rev. 191.

C.J.S. 19 C.J.S., Corp., § 883 et seq.

UALR L.J. Tyler, Survey of Business Law, 3 UALR L.J. 149.

Survey — Business Law, 10 UALR L.J. 89.

Part A: Certificate of Authority

4-27-1501. Authority to transact business required.

(a) A foreign corporation may not transact business in this state until it obtains a certificate of authority from the Secretary of State.

(b) The following activities, among others, do not constitute transacting business within the meaning of subsection (a) of this section:

- (1) Maintaining, defending, or settling any proceeding;
- (2) Holding meetings of the board of directors or shareholders, or carrying on other activities concerning internal corporate affairs;
- (3) Maintaining bank accounts;
- (4) Maintaining offices or agencies for the transfer, exchange, and registration of the corporation's own securities or maintaining trustees or depositaries with respect to those securities;
- (5) Selling through independent contractors;
- (6) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;
- (7) Creating or acquiring indebtedness, mortgages, and security interests in real or personal property;
- (8) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;
- (9) Owning, without more, real or personal property;
- (10) Conducting an isolated transaction that is completed within thirty (30) days and that is not one in the course of repeated transactions of a like nature;
- (11) Transacting business in interstate commerce.

(c) The list of activities in subsection (b) of this section is not exhaustive.

History. Acts 1987, No. 958, § 64-1501; 1987 (1st Ex. Sess.), No. 11, § 14.

CASE NOTES

ANALYSIS

In general.
State's authority.
Transacting business in state.

—In general.
—Agents.
—Certificate of authority.
—Executed contracts.
—Independent contractors.

- Interstate commerce.
- Law suits.
- Mortgages.
- Sales agreements.
- Sales by correspondence.
- Shipping merchandise.
- Verbal agreements.
- Withdrawal from state.

In General.

This section and § 4-27-1502 are not to be used to penalize, but to encourage foreign corporations to file for a certificate of authority. *Johnny's Pizza House, Inc. v. Huntsman*, 311 Ark. 346, 844 S.W.2d 320 (1992).

State's Authority.

State may impose terms upon foreign corporations desiring to do business in the state. *Western Union Tel. Co. v. State*, 82 Ark. 309, 101 S.W. 748 (1907) (decision under prior law).

The state only has authority to permit foreign corporations to do business here and to regulate the manner in which their business is done. *Missouri Pac. R.R. v. W.S. Fox & Sons, Inc.*, 251 Ark. 247, 472 S.W.2d 726 (1971) (decision under prior law).

Transacting Business in State.

—In General.

Corporation held to be doing business in state. *Kansas City Structural Steel Co. v. State ex rel. Ashley County*, 161 Ark. 483, 256 S.W. 845 (1923), *aff'd*, 269 U.S. 148, 46 S. Ct. 59, 70 L. Ed. 204 (1925); *Eisenmayer Milling Co. v. George E. Shelton Produce Co.*, 176 Ark. 620, 3 S.W.2d 688 (1928); *Vaccinol Prods. Corp. v. State ex rel. Phillips County*, 203 Ark. 302, 156 S.W.2d 250 (1941); *National Distributions, Inc. v. Simard*, 246 Ark. 774, 440 S.W.2d 31 (1969); *Uncle Ben's, Inc. v. Crowell*, 482 F. Supp. 1149 (E.D. Ark. 1980) (preceding decisions under prior law).

When a foreign corporation transacts some substantial part of its ordinary business in this state, it is doing business therein within the meaning of the statute. *Murray Tool & Supply Co. v. State ex rel. Crawford County*, 203 Ark. 874, 159 S.W.2d 71 (1942); *Uncle Ben's, Inc. v. Crowell*, 482 F. Supp. 1149 (E.D. Ark. 1980) (preceding decisions under prior law).

In order for a foreign corporation to be

“doing business,” the business must be such as to warrant an inference that the corporation has subjected itself to local jurisdiction and that the transactions were of an intrastate character. *Sillin v. Hessig-Ellis Drug Co.*, 181 Ark. 386, 26 S.W.2d 122 (1930) (decision under prior law).

Corporation held not to be doing business in state. *Scruggs v. Scottish-American Mtg. Co.*, 54 Ark. 566, 16 S.W. 563 (1891); *Gunn v. White Sewing Mach. Co.*, 57 Ark. 24, 20 S.W. 591 (1892); *Coblentz & Logsdon v. L.D. Powell Co.*, 148 Ark. 151, 229 S.W. 25 (1921); *Davis & Worrell v. GMAC*, 153 Ark. 626, 241 S.W. 44 (1922); *Equitable Credit Co. v. Rogers*, 175 Ark. 205, 299 S.W. 747 (1927); *Security Trust Co. v. Martin*, 178 Ark. 518, 12 S.W.2d 870 (1928); *Chicago Title & Trust Co. v. Hagler Special Sch. Dist. No. 27*, 178 Ark. 443, 12 S.W.2d 881 (1928); *H.J. Heinz Co. v. Duke*, 196 Ark. 180, 116 S.W.2d 1039 (1938); *Standard Mut. Benefit Corp. v. State*, 197 Ark. 333, 122 S.W.2d 459 (1938); *Murray Tool & Supply Co. v. State ex rel. Crawford County*, 203 Ark. 874, 159 S.W.2d 71 (1942); *McWhorter v. Anchor Serum Co.*, 72 F. Supp. 437 (W.D. Ark. 1947); *Worthen Bank & Trust Co. v. United Underwriters Sales Corp.*, 251 Ark. 454, 474 S.W.2d 899 (1971); *Pioneer Fin. Co. v. Lane*, 255 Ark. 811, 502 S.W.2d 624 (1973); *Taurus Leasing Corp. v. Howard*, 272 Ark. 323, 614 S.W.2d 502 (1981) (preceding decisions under prior law).

Miscellaneous cases decided under prior law. *W.T. Rawleigh Medical Co. v. Holcomb*, 126 Ark. 597, 191 S.W. 215 (1917); *Loose-Wiles Biscuit Co. v. Jolly*, 152 Ark. 442, 238 S.W. 613 (1922); *L.D. Powell Co. v. Rountree*, 157 Ark. 121, 247 S.W. 389 (1923); *Power Mfg. Co. v. Saunders*, 274 U.S. 490, 47 S. Ct. 678, 71 L. Ed. 1165 (1927); *American Trust Co. v. Vandertuuk*, 175 Ark. 728, 1 S.W.2d 41 (1927); *Austell v. Union Cent. Life Ins. Co.*, 175 Ark. 1143, 2 S.W.2d 22 (1928); *Mercer v. Motor Wheel Corp.*, 178 Ark. 383, 10 S.W.2d 852 (1928); *Stewart v. California Grape Juice Corp.*, 181 Ark. 1140, 29 S.W.2d 1077 (1930); *Chapman & Dewey Lumber Co. v. Means*, 191 Ark. 1066, 88 S.W.2d 829 (1935); *Missouri Pac. Transp. Co. v. Norwood*, 192 Ark. 170, 90 S.W.2d 480 (1936); *Vaccinol Prods. Corp. v. State ex rel. Phillips County*, 201 Ark. 1066, 148 S.W.2d 1069 (1941); *Crown*

Cent. Petroleum Corp. v. Speer, 206 Ark. 216, 174 S.W.2d 547 (1943); Arkansas-Louisiana Elec. Coop. v. Arkansas Pub. Serv. Comm'n, 210 Ark. 84, 194 S.W.2d 673 (1946); Consumers Coop. Ass'n v. Hill, 233 Ark. 59, 342 S.W.2d 657 (1961); National Sur. Corp. v. Inland Properties, Inc., 286 F. Supp. 173 (E.D. Ark. 1968), *aff'd*, 416 F.2d 457 (8th Cir. 1969); Lane v. Midwest Bancshares Corp., 337 F. Supp. 1200 (E.D. Ark. 1972); Rayco Constr. Co. v. Vorsanger, 397 F. Supp. 1105 (E.D. Ark. 1975); Franklin Elec. Co. v. Heath, 261 Ark. 269, 547 S.W.2d 755 (1977); Calvert Fire Ins. Co. v. Carpet Mart of Texarkana, Inc., 266 Ark. 477, 587 S.W.2d 1 (1979); Wilkins v. M & H Fin., Inc., 621 F.2d 311 (8th Cir. 1980); Stewart Elec. Co. v. Meyer Sys. Corp., 276 Ark. 71, 632 S.W.2d 422 (1982); Clark Equip. Credit Corp. v. Martin Lumber Co., 731 F.2d 579 (8th Cir. 1984); Standard Abstract & Title Co. v. Rector-Phillips-Morse, Inc., 282 Ark. 138, 666 S.W.2d 696 (1984); Zolper v. AT & T Info. Sys., 289 Ark. 27, 709 S.W.2d 74 (1986).

—Agents.

Statute applied where a foreign corporation employed an agent who did business for it within the state. *Clark v. J.R. Watkins Medical Co.*, 115 Ark. 166, 171 S.W. 136 (1914); *American Hardwood Lumber Co. v. T.J. Ellis & Co.*, 115 Ark. 524, 171 S.W. 899 (1914) (preceding decisions under prior law).

Where president of foreign corporation accepted contracts involving sales in his representative capacity in Louisiana but did not conduct any activities in Arkansas, statute was not applicable. *Frank v. Steel*, 253 Ark. 338, 485 S.W.2d 737 (1972) (decision under prior law).

—Certificate of Authority.

The authority of a foreign corporation to do business in this state may be proved by the certificate of authority issued to such corporation by the Secretary of State. *J.R. Watkins Medical Co. v. Martin*, 132 Ark. 108, 200 S.W. 283 (1917) (decision under prior law).

Where a foreign corporation introduced into evidence the certificate of authority to do business issued by the Secretary of State and also receipts for annual franchise taxes paid, its corporate existence was established, and a certified copy of the

charter of a foreign corporation as filed in the office of the Secretary of State which recited that it had complied with the laws and paid the necessary fees therefor was sufficient to prove its authority to do business in the state. *American Trust Co. v. Netherlands-American Mtg. Bank*, 169 Ark. 867, 276 S.W. 1010 (1925) (decision under prior law).

A certificate of authority to do business issued by the Secretary of State was sufficient evidence of corporate existence and where a defendant appears and answers by a corporate name and did not show it was not incorporated, it thereby admitted its incorporation. *Sakaba Oil Co. v. Parish*, 175 Ark. 618, 299 S.W. 1016 (1927) (decision under prior law).

—Executed Contracts.

Where payment under contract had not been made, such contract was not an executed contract and therefore not relieved from the provisions of statute as an executed contract. *Pratt Lab., Inc. v. Teague*, 160 F. Supp. 176 (W.D. Ark. 1958) (decision under prior law).

—Independent Contractors.

Corporation under contract with federal government was an independent contractor and not exempted from statute. *E.E. Morgan Co. v. State ex rel. Phillips County*, 202 Ark. 404, 150 S.W.2d 736 (1941), appeal dismissed, 314 U.S. 571, 62 S. Ct. 77, 86 L. Ed. 463 (1942) (decision under prior law).

—Interstate Commerce.

Former statute does not apply to foreign corporations engaged in interstate commerce. *W.T. Rawleigh Medical Co. v. Rose*, 133 Ark. 505, 202 S.W. 849 (1918); *Coblentz & Logsdon v. L.D. Powell Co.*, 148 Ark. 151, 229 S.W. 25 (1921); *White River Valley Broadcasters, Inc. v. William B. Tanner Co.*, 487 F. Supp. 725 (E.D. Ark. 1979); *Johnson v. Stuckey & Speer, Inc.*, 11 Ark. App. 33, 665 S.W.2d 904 (1984) (preceding decisions under prior law).

Corporation held not to be engaged in interstate commerce. *Sunlight Produce Co. v. State*, 183 Ark. 64, 35 S.W.2d 342 (1931) (decision under prior law).

A foreign corporation cannot engage in interstate business along with intrastate business so as to avoid the penalty imposed on foreign corporations for doing business within the state without comply-

ing with the law. *Sunlight Produce Co. v. State*, 183 Ark. 64, 35 S.W.2d 342 (1931); *State ex rel. Independence County v. Tad Screen Adv. Co.*, 199 Ark. 205, 133 S.W.2d 1 (1939) (preceding decisions under prior law).

Statute did not apply to contracts relating solely to interstate commerce. *Pratt Lab., Inc. v. Teague*, 160 F. Supp. 176 (W.D. Ark. 1958); *Rose's Mobile Homes, Inc. v. Rex Fin. Corp.*, 383 F. Supp. 937 (W.D. Ark. 1974) (preceding decisions under prior law).

If note involved in suit was based entirely on an intrastate transaction, statute would have applied even though the plaintiff was a foreign corporation engaged in interstate commerce, and conversely, even if plaintiff had done intrastate business in Arkansas without being qualified to do so, it could nevertheless have recovered on a note if the note was based on transactions which were entirely interstate in character. *Pratt Lab., Inc. v. Teague*, 160 F. Supp. 176 (W.D. Ark. 1958) (decision under prior law).

Contract of noncomplying foreign corporation held enforceable as being interstate commerce. *Goode v. Universal Plastics, Inc.*, 247 Ark. 442, 445 S.W.2d 893 (1969); *Unlaub Co. v. Sexton*, 568 F.2d 72 (8th Cir. 1977) (preceding decisions under prior law).

Corporation held to be engaged in interstate commerce. *Uncle Ben's, Inc. v. Crowell*, 482 F. Supp. 1149 (E.D. Ark. 1980) (decision under prior law).

Foreign corporation's employment of resident soliciting agents and physical presence of its employees in the state were not sufficient circumstances to change the predominantly interstate nature of its business. *Uncle Ben's, Inc. v. Crowell*, 482 F. Supp. 1149 (E.D. Ark. 1980) (decision under prior law).

Former statute was not applicable to contracts in which the transaction was wholly in interstate commerce. *Hough v. Continental Leasing Corp.*, 275 Ark. 340, 630 S.W.2d 19 (1982) (decision under prior law).

—Law Suits.

Institution and prosecution of suit is "doing business." *Buffalo Zinc & Copper Co. v. Crump*, 70 Ark. 525, 69 S.W. 572 (1902) (decision under prior law).

—Mortgages.

Taking mortgage to secure past-due

debt is not "doing business." *Florsheim Bros. Dry Goods Co. v. Lester*, 60 Ark. 120, 29 S.W. 34 (1895); *British & Am. Mtg. Co. v. Winchell*, 62 Ark. 160, 34 S.W. 891 (1896); *Simmons-Burks Clothing Co. v. Linton*, 90 Ark. 73, 117 S.W. 775 (1909) (preceding decisions under prior law).

—Sales Agreements.

Where a bank, acting for a foreign corporation, prepares and delivers various papers within the state according to a sales agreement made without the state, the foreign corporation is not "doing business." *Linograph Co. v. Logan*, 175 Ark. 194, 299 S.W. 609 (1927) (decision under prior law).

—Sales by Correspondence.

A sale by written correspondence does not constitute "doing business" within the state. *Rose City Bottling Works v. Godchaux Sugars, Inc.*, 151 Ark. 269, 236 S.W. 825 (1922); *S.B. Wilson Tel. Co. v. John A. Roebling's Sons Co.*, 159 Ark. 634, 252 S.W. 919 (1923) (preceding decisions under prior law).

—Shipping Merchandise.

A contract for the sale of merchandise to be shipped from the foreign corporation's place of business in another state to a purchaser within the state does not constitute "doing business." *Robertson v. Southwestern Co.*, 136 Ark. 417, 206 S.W. 755 (1918) (decision under prior law).

—Verbal Agreements.

Verbal agreement incorporating printed form was not covered by statute. *Bragg's Elec. Constr. Co. v. Rebsamen Cos.*, 6 Bankr. 619 (Bankr. E.D. Ark. 1980) (decision under prior law).

—Withdrawal from State.

Where a foreign corporation discontinues doing business within the state and ceases to comply with the statutory provisions, it withdraws from the state and loses its legal identity therein. In order to again do business, it must qualify by paying the regular filing fee required of foreign corporations. *Phoenix Assurance Co. v. Ludwig*, 87 Ark. 465, 113 S.W. 34 (1908) (decision under prior law).

A foreign corporation cannot, by withdrawing, defeat obligations already incurred; consequently a foreign corporation could not escape from the jurisdiction of the state courts over action brought by residents with whom it had contracted by

revoking the power of attorney it had given for service of process in Arkansas and ceasing to do business within the state. *Sydean Bros. v. Wofford*, 185 Ark. 775, 49 S.W.2d 363 (1932) (decision under prior law).

4-27-1502. Consequences of transacting business without authority.

(a) A foreign corporation transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

(b) The successor to a foreign corporation that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.

(c) A court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

(d) A foreign corporation is liable for a civil penalty of not more than five thousand dollars (\$5,000) and not less than one hundred dollars (\$100) if it transacts business in this state without a certificate of authority. The Secretary of State shall promulgate regulations for the calculation of the appropriate penalty. In determining the appropriate penalty, the Secretary of State shall consider the size and assets of the corporation, the total amount of business transacted by the corporation within the state and such other circumstances as the Secretary of State determines appropriate. The Secretary of State may institute proceedings in Pulaski County Circuit Court to recover such penalty.

(e) Notwithstanding subsections (a) and (b) of this section, the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in this state.

History. Acts 1987, No. 958, § 64-1502.

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Constitutionality.

Statute concerning filing and penalties

for noncompliance was constitutional. *Roberts v. Chatwin*, 108 Ark. 562, 158 S.W. 497 (1913); *Republic Power & Serv. Co. v. Gus Blass Co.*, 165 Ark. 163, 263 S.W. 785 (1924) (preceding decisions under prior law).

Statute concerning filing and penalties for noncompliance, if applied to foreign corporations shipping goods into the state to fill orders, was invalid as repugnant to the commerce clause of the federal Constitution. *American Ry. Express Co. v. H. Rouw Co.*, 173 Ark. 810, 294 S.W. 401 (1927); *Furst & Thomas v. Brewster*, 282 U.S. 493, 51 S. Ct. 295, 75 L. Ed. 478 (1931) (preceding decisions under prior law).

Where soliciting agent of foreign corporation solicited and obtained from local merchants contracts for advertising films which were manufactured outside the state, main purpose of the contracts being the exhibition or screening of the films in this state, and shipment of the films being merely incidental to such purpose, imposition of penalty provided by statute was not an interference with interstate commerce. *State ex rel. Independence County v. Tad Screen Adv. Co.*, 199 Ark. 205, 133 S.W.2d 1 (1939) (decision under prior law).

Applicability of statute to foreign corporation engaged in the construction of a levee under contract with the federal government was not repugnant to either the commerce clause or the due process clause of the federal Constitution. *E.E. Morgan Co. v. State ex rel. Phillips County*, 202 Ark. 404, 150 S.W.2d 736 (1941), appeal dismissed, 314 U.S. 571, 62 S. Ct. 77, 86 L. Ed. 463 (1942) (decision under prior law).

Statute could not constitutionally be applied to an action by a news gathering organization to recover on a contract with an Arkansas broadcasting company, where the nature of the news gathering organization's business required a finding that interstate commerce was involved. *Associated Press v. Riddle*, 496 F. Supp. 119 (E.D. Ark. 1980) (decision under prior law).

In General.

Statute did not confer a local residence upon foreign corporations; it only provided a remedy for those who may have causes of action against them in this state. *Central Coal & Coke Co. v. Orwig*, 150 Ark. 635, 235 S.W. 390 (1921) (decision under prior law).

Statute, if applicable, had to be enforced by the court even though to enforce it would cause a forfeiture. *Pratt Lab., Inc. v. Teague*, 160 F. Supp. 176 (W.D. Ark. 1958) (decision under prior law).

State law of Arkansas is applied to determine the "threshold" application of statute to activities. *Uncle Ben's, Inc. v. Crowell*, 482 F. Supp. 1149 (E.D. Ark. 1980) (decision under prior law).

Construction.

Statute was a penal statute and to be strictly construed in favor of those against whom the penalty was sought. *Alexander Film Co. v. State*, 201 Ark. 1052, 147 S.W.2d 1011 (1941); *Widmer v. J.I. Case Credit Corp.*, 243 Ark. 149, 419 S.W.2d 617 (1967); *Wilkins v. M & H Fin., Inc.*, 476 F. Supp. 212 (E.D. Ark. 1979), *aff'd*, 621 F.2d 311 (8th Cir. 1980) (preceding decisions under prior law).

Penal statute was not to be invoked except in cases where the evidence warranted a belief that the corporation was, in fact, doing business within the state. *Murray Tool & Supply Co. v. State ex rel. Crawford County*, 203 Ark. 874, 159 S.W.2d 71 (1942) (preceding decisions under prior law).

Purpose.

The sole purpose of the penalty imposed under statute was to secure compliance with the provisions requiring foreign corporations to secure a certificate of authority to do business in this state before doing any such business. *Alexander Film Co. v. State*, 201 Ark. 1052, 147 S.W.2d 1011 (1941) (decision under prior law).

The lawmakers by increasing the fine (in former law) did not intend to declare by implication that the state's long-standing policy of supplementing the monetary penalty by the additional provision that the contracts of unlicensed foreign corporations should be unenforceable was being abandoned. *Arkansas Airmotive Div. of Currey Aerial Sprayers, Inc. v. Arkansas Aviation Sales, Inc.*, 232 Ark. 354, 335 S.W.2d 813 (1960) (decision under prior law).

This section and § 4-27-1501 are not to be used to penalize, but to encourage foreign corporations to file for a certificate of authority. *Johnny's Pizza House, Inc. v. Huntsman*, 311 Ark. 346, 844 S.W.2d 320 (1992).

Applicability.

Statute had no application to defendant's motion that a matter be stayed pending arbitration of disputes which arose as a result of two separate contracts entered into between plaintiffs and defendant. *Consolidated Naturals, Inc. v. Wm. T. Thompson Co.*, 623 F. Supp. 458 (W.D. Ark. 1985) (decision under prior law).

Statute prevented an unregistered foreign corporation from enforcing its contracts; however, where the relief being awarded the claimants was restitutionary in nature and was based upon the theory of quasi-contract, statute was inapplicable. *Dews v. Halliburton Indus., Inc.*, 288 Ark. 532, 708 S.W.2d 67 (1986) (decision under prior law).

Where the foreign corporation did not demonstrate that the contract fell within the protection of the Commerce Clause of the United States Constitution, this state was not precluded from exercising its right to require the corporation to comply with former statute. *North Am. Phillips Com. Elecs. Corp. v. Gaytri Corp.*, 291 Ark. 11, 722 S.W.2d 270 (1987) (decision under prior law).

The test to determine whether the threshold requirements for applicability of the penalty provisions of the Wingo Act have been met consists of two parts: first, it must be demonstrated that the contract was made by a nonqualifying foreign corporation which was "doing business" in the state; and second, it must be shown that the particular contract in question was made in this state. *North Am. Phillips Com. Elecs. Corp. v. Gaytri Corp.*, 291 Ark. 11, 722 S.W.2d 270 (1987) (decision under prior law).

Defense.

Where the defendant attacks the right of a foreign corporation to do business, he must set up this defense in his answer, and when the defendant, by his answer, does attack the corporation's compliance, the burden of proof is upon the foreign corporation to show that it has met the statutory requirements. *Miellmier v. Toledo Scale Co.*, 128 Ark. 211, 193 S.W. 497 (1917); *Johnson v. Stuckey & Speer, Inc.*, 11 Ark. App. 33, 665 S.W.2d 904 (1984) (preceding decisions under prior law).

The defense that a contract is in violation of statute and thus void ab initio is an affirmative one required to be raised and

pleaded. *Leasing Assocs. v. Slaughter & Son*, 450 F.2d 174 (8th Cir. 1971) (decision under prior law).

Doing Business.

In order to set up the Wingo Act as a defense, the party had to show that the foreign corporation was doing business in Arkansas. *Dickson v. Delhi Seed Co.*, 26 Ark. App. 83, 760 S.W.2d 382 (1988) (decision under prior law).

A corporation was doing business in Arkansas within the meaning of the Wingo Act when it transacted some substantial part of its ordinary business in this state. *Dickson v. Delhi Seed Co.*, 26 Ark. App. 83, 760 S.W.2d 382 (1988) (decision under prior law).

Enforcement of Contracts.**—In General.**

Contract of noncomplying foreign corporation held unenforceable. *J.R. Watkins Medical Co. v. Williams*, 124 Ark. 539, 187 S.W. 653 (1916); *Republic Power & Serv. Co. v. Gus Blass Co.*, 165 Ark. 163, 263 S.W. 785 (1924); *S. Gumpert Co. v. Hernreich*, 199 Ark. 376, 134 S.W.2d 568 (1939); *B. & P., Inc. v. Norment*, 241 Ark. 1092, 411 S.W.2d 506 (1967); *S. & L. Painting Contractors v. Vickers*, 267 Ark. 109, 589 S.W.2d 196 (1979); *Snow v. C.I.T. Corp.*, 278 Ark. 554, 647 S.W.2d 465 (1983) (preceding decisions under prior law).

A foreign corporation not qualified to do business in the state can enforce a contract in this state if the contract is made outside the state or if the contract calls for a transaction that is wholly within interstate commerce. *Goode v. Universal Plastics, Inc.*, 247 Ark. 442, 445 S.W.2d 893 (1969); *Consolidated Naturals, Inc. v. Wm. T. Thompson Co.*, 623 F. Supp. 458 (W.D. Ark. 1985); *Germer v. Missouri Portland Cement Co.*, 301 Ark. 277, 783 S.W.2d 359 (1990).

Former statute was a "penal statute" which punished doing business without certification by creating an absolute defense against recovery on contracts which were deemed illegal if made in contravention thereof. *Leasing Assocs. v. Slaughter & Son*, 450 F.2d 174 (8th Cir. 1971) (decision under prior law).

In order for a contract to fall within the sanction of statute, the contracts must be made by a nonqualifying foreign corpora-

tion which has "done business" in the State, and must be made in Arkansas. *Uncle Ben's, Inc. v. Crowell*, 482 F. Supp. 1149 (E.D. Ark. 1980); *Johnson v. Stuckey & Speer, Inc.*, 11 Ark. App. 33, 665 S.W.2d 904 (1984) (preceding decisions under prior law).

Failure of corporation to register to do business in the state did not bar the enforcement of contract where the contract provided it had to be accepted in another state. *Bassett v. Hobart Corp.*, 292 Ark. 592, 732 S.W.2d 133 (1987) (decision under prior law).

Where the defendant was doing business in Arkansas in violation of the Wingo Act, and its operation was sufficiently localized in nature as to allow state regulation, the contract between the parties was unenforceable, and the related note and mortgage were invalid. *Brogdon v. Exterior Design*, 781 F. Supp. 1396 (W.D. Ark. 1992) (decision under prior law).

—Alternative Remedies.

Although the defendant was an unqualified corporation, and was therefore prohibited by statute from suing to enforce its contract, it was nevertheless entitled to rescind the contract and seek restitution. *C.B. Int'l, Inc. v. Cook*, 659 F.2d 862 (8th Cir. 1981) (decision under prior law).

Foreign corporations operating in violation of the Wingo Act have been allowed to recover in Arkansas based upon theories such as quasi-contract, which do not require use of the unenforceable contract to prove their case. *Midland Dev., Inc. v. Pine Truss, Inc.*, 24 Ark. App. 132, 750 S.W.2d 62 (1988) (decision under prior law).

An assignee of a foreign corporation which failed to comply with the terms of the Wingo Act could recover under a theory of quantum meruit, because the court would not allow the plaintiffs to be unjustly enriched. *Brogdon v. Exterior Design*, 781 F. Supp. 1396 (W.D. Ark. 1992) (decision under prior law).

—Place of Making.

A foreign corporation may sue in the state to enforce contracts made in other states without complying with the statutory requirements for doing business. *Graysonia, N. & A.R.R. v. Newberger Cotton Co.*, 170 Ark. 1039, 282 S.W. 975 (1926) (decision under prior law).

Former statute applied only to contracts

made in this state. *United Press Int'l, Inc. v. Hernreich*, 241 Ark. 36, 406 S.W.2d 317 (1966); *United Press Int'l, Inc. v. Hernreich*, 241 Ark. 33, 406 S.W.2d 322 (1966); *Widmer v. J.I. Case Credit Corp.*, 243 Ark. 149, 419 S.W.2d 617 (1967); *Wilkins v. M & H Fin., Inc.*, 476 F. Supp. 212 (E.D. Ark. 1979), *aff'd*, 621 F.2d 311 (8th Cir. 1980); *Stacy v. St. Charles Custom Kitchens of Memphis, Inc.*, 284 Ark. 441, 683 S.W.2d 225 (1985) (preceding decisions under prior law).

A foreign corporation not admitted to do business in the state was not precluded from suing in the courts of the state on a contract made outside the state. *Brown Broadcast, Inc. v. Pepper Sound Studios, Inc.*, 242 Ark. 701, 416 S.W.2d 284 (1967) (decision under prior law).

Statute did not apply to the making of a loan in a foreign state by a foreign corporation secured by a mortgage on Arkansas real estate with the foreign corporation having no Arkansas contracts other than those incidental to such loan. *National Sur. Corp. v. Inland Properties, Inc.*, 286 F. Supp. 173 (E.D. Ark. 1968), *aff'd*, 416 F.2d 457 (8th Cir. 1969) (decision under former law).

Where last act necessary for the completion of a contract was performed in another state, the contract was a foreign contract that could be enforced in Arkansas even though the foreign corporation was not qualified to do business in Arkansas under the statute. *Rose's Mobile Homes, Inc. v. Rex Fin. Corp.*, 383 F. Supp. 937 (W.D. Ark. 1974) (decision under prior law).

Statute did not apply to contracts where last act necessary to make the contracts binding occurred in other state. *White River Valley Broadcasters, Inc. v. William B. Tanner Co.*, 487 F. Supp. 725 (E.D. Ark. 1979); *Moore v. Luxor (N. Am.) Corp.*, 294 Ark. 326, 742 S.W.2d 916 (1988) (preceding decisions under prior law).

The fact that the contract for purchase of the real estate was to be closed in Arkansas would not make a contract entered into out of the State of Arkansas invalid. *Leenerts Farms, Inc. v. Cranco*, 265 Ark. 359, 578 S.W.2d 229 (1979) (decision under prior law).

Where final acceptance of a contract was made in another state, the contract was a foreign contract in interstate commerce and a foreign corporation could

enforce it in the courts of Arkansas despite its status as a nonqualifying corporation. *Hough v. Continental Leasing Corp.*, 275 Ark. 340, 630 S.W.2d 19 (1982) (decision under prior law).

—Subsequent Compliance.

Fact that a foreign corporation, which executed a contract in the state, without complying with state laws as to doing business, subsequently complied with statute gave it no right to enforce such contract. *Republic Power & Serv. Co. v. Gus Blass Co.*, 165 Ark. 163, 263 S.W. 785 (1924) (decision under prior law).

Where a contract, complete in itself, had been entered into between a resident and a foreign corporation after the date of its domestication, it was valid and enforceable, even though an unenforceable but valid contract between the resident and undomesticated foreign corporation provided the basis for the contract. *Jack Tar of Ark., Inc. v. National Wells Television, Inc.*, 234 Ark. 306, 351 S.W.2d 848 (1961) (decision under prior law).

—Subsequent Holders.

Where an unqualified foreign corporation accepts notes and mortgages, its assignee cannot sue on such notes and mortgages, the defect is inherent and all subsequent purchasers take with notice of the defect. *Hogan v. Intertype Corp.*, 136 Ark. 52, 206 S.W. 58 (1918); *Dean v. Caldwell*, 141 Ark. 38, 216 S.W. 31 (1919) (preceding decisions under prior law).

Former statute had to be complied with to enable even an assignee to enforce an executory contract. *Republic Power & Serv. Co. v. Gus Blass Co.*, 165 Ark. 163, 263 S.W. 785 (1924) (decision under prior law).

There can be no holder in due course of a negotiable instrument arising out of an illegal transaction under state law. *Pacific Nat'l Bank v. Hernreich*, 240 Ark. 114, 398 S.W.2d 221 (1966) (decision under prior law).

Statute was applicable to assignees of unenforceable contracts entered into in the state by foreign corporations not qualified to do business in the state. *Union Planters Nat'l Bank v. Moore*, 250 Ark. 272, 464 S.W.2d 786 (1971) (decision under prior law).

—Validity of Contract.

Where a foreign corporation doing business in the state failed to comply with

former statute, any contracts made by it were not void but merely unenforceable. *Hicks Body Co. v. Ward Body Works, Inc.*, 233 F.2d 481 (8th Cir. 1956); *Pratt Lab., Inc. v. Teague*, 160 F. Supp. 176 (W.D. Ark. 1958); *Pellerin Laundry Mach. Sales Co. v. Hogue*, 219 F. Supp. 629 (W.D. Ark. 1963). But see *Pacific Nat'l Bank v. Hernreich*, 240 Ark. 114, 398 S.W.2d 221 (1966); *Union Planters Nat'l Bank v. Moore*, 250 Ark. 272, 464 S.W.2d 786 (1971); *Worthen Bank & Trust Co. v. United Underwriters Sales Corp.*, 251 Ark. 454, 474 S.W.2d 899 (1971) (preceding decisions under prior law).

Contracts entered into in the state by foreign corporation doing business in contravention of former statute were not merely unenforceable but are void ab initio. *Pacific Nat'l Bank v. Hernreich*, 240 Ark. 114, 398 S.W.2d 221 (1966); *Union Planters Nat'l Bank v. Moore*, 250 Ark. 272, 464 S.W.2d 786 (1971); *Worthen Bank & Trust Co. v. United Underwriters Sales Corp.*, 251 Ark. 454, 474 S.W.2d 899 (1971) (preceding decisions under prior law).

Jurisdiction.

Service upon president of foreign corporation authorized to do business in state but not in fact doing business in the state did not give federal district court jurisdiction of suit by foreign corporation against defendant corporation where suit was based on contract between parties arising in another state. *Groves, Lundin & Cox, Inc. v. Oklahoma-Arkansas Tel. Co.*, 104 F. Supp. 381 (W.D. Ark. 1952) (decision under prior law).

Where action which was brought in one county against foreign corporations authorized to do business in this state had arisen in Oklahoma and summonses were served upon agents designated by such corporations as those upon whom summonses could be served, the circuit court had jurisdiction over the subject matter of the action. *Deason v. Groendyke Transp., Inc.*, 176 F. Supp. 346 (W.D. Ark. 1959) (decision under prior law).

Equity will not take jurisdiction to grant relief when there is an adequate and complete remedy at law. Certiorari in the circuit court was the available remedy to review the decision of an administrative board where it was claimed that the board had exceeded its jurisdiction or pro-

ceeded illegally and when there was no appeal provided by statute. *Consumers Coop. Ass'n v. Hill*, 233 Ark. 59, 342 S.W.2d 657 (1961) (decision under prior law).

Penalty.

There was a two-part test to determine whether the threshold requirements for application of the penalty provisions of the Wingo Act had been met: first, it had to be demonstrated that the contract was made by a nonqualifying foreign corporation which was "doing business" in the state; and second, it had to be shown that the particular contract in question was made in Arkansas. Further, if it was raised as a defense, the court had to consider whether the commerce clause of the United States Constitution precluded application of the sanctions of the penalty provision. *Dickson v. Delhi Seed Co.*, 26 Ark. App. 83, 760 S.W.2d 382 (1988) (decision under prior law).

Permissible Suits.

A foreign corporation has the right to sue for damages to its property even though such property may have been acquired by the corporation in the transaction of business without complying with the statutory requirements. *Saint Louis, A. & T. Ry. v. Fire Ass'n*, 60 Ark. 325, 30 S.W. 350 (1895) (decision under prior law).

Former similar provision held not applicable to suit to quiet title since in so doing the noncomplying corporation was not seeking to enforce any demand growing out of a contract with or tort committed by the other party to the action. *Rachels v. Stecher Cooperage Works*, 95 Ark. 6, 128 S.W. 348 (1910) (decision under prior law).

A foreign corporation authorized to do business in the state may maintain an action for the benefit of one not having such authority. *Graysonia, N. & A.R.R. v. Newberger Cotton Co.*, 170 Ark. 1039, 282 S.W. 975 (1926) (decision under prior law).

A foreign corporation, even though unlicensed, is nevertheless permitted to bring suit to protect its property as long as the suit does not unavoidably involve the enforcement of a prohibited contract. *Arkansas Airmotive Div. of Currey Aerial Sprayers, Inc. v. Arkansas Aviation Sales,*

Inc., 232 Ark. 354, 335 S.W.2d 813 (1960); *Pellerin Laundry Mach. Sales Co. v. Hogue*, 219 F. Supp. 629 (W.D. Ark. 1963) (preceding decisions under prior law).

The test to determine whether an unlimited foreign corporation is entitled to recover or not, is its ability to establish its case without any aid from illegal transaction; if its right to recover depends on the contract which is prohibited by statute, and that contract must necessarily be proved to make out its case, there can be no recovery. *Arkansas Airmotive Div. of Currey Aerial Sprayers, Inc. v. Arkansas Aviation Sales, Inc.*, 232 Ark. 354, 335 S.W.2d 813 (1960) (decision under prior law).

There was no authority to support the proposition that a foreign corporation could not enforce a valid obligation of a resident corporation on a note and mortgage simply because the foreign corporation no longer was a registered foreign corporation doing business in Arkansas. *Wild Turkey Ranch, Inc. v. Wilhelm Nursing Home, Inc.*, 12 Ark. App. 392, 677 S.W.2d 871 (1984) (decision under prior law).

Where foreign corporation, at time of filing suit, was transacting business in the state without a certificate of authority, it was necessary for corporation to obtain a certificate of authority to transact business in this state before it could maintain suit. *Centennial Valley Ranch Mgt., Inc. v. Agri-Tech Ltd. Partnership*, 38 Ark. App. 177, 832 S.W.2d 259 (1992).

Presumptions.

Until the contrary appears, the law will presume a foreign corporation doing business in the state has complied with the law. *Saint Louis, A. & T. Ry. v. Fire Ass'n*, 55 Ark. 163, 18 S.W. 43 (1891), *aff'd*, 60 Ark. 325, 30 S.W. 350 (1895) (decision under prior law).

Stay of Proceedings.

A stay of proceedings to permit a foreign corporation which should have obtained a certificate of authority but failed to do so is to be liberally granted. *Johnny's Pizza House, Inc. v. Huntsman*, 311 Ark. 346, 844 S.W.2d 320 (1992).

4-27-1503. Application for certificate of authority.

(a) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the Secretary of State for filing. The application must set forth:

(1) the name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of § 4-27-1506;

(2) the name of the state or country under whose law it is incorporated;

(3) its date of incorporation and period of duration;

(4) the street address of its principal office;

(5) the address of its registered office in this state and the name of its registered agent at that office; and

(6) the number and par value, if any, of shares of the corporation's capital stock owned or to be owned by residents of this state.

(b) The foreign corporation shall deliver with the completed application a certificate of existence (or a document of similar import) duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under whose law it is incorporated.

History. Acts 1987, No. 958, § 64-1503.

4-27-1504. Amended certificate of authority.

(a) A foreign corporation authorized to transact business in this state must obtain an amended certificate of authority from the Secretary of State if it changes:

(1) its corporate name;

(2) the period of its duration; or

(3) the state or country of its incorporation.

(b) The requirements of § 4-27-1503 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

History. Acts 1987, No. 958, § 64-1504.

4-27-1505. Effect of certificate of authority.

(a) A certificate of authority authorizes the foreign corporation to which it is issued to transact business in this state subject, however, to the right of the state to revoke the certificate as provided in this chapter.

(b) A foreign corporation with a valid certificate of authority has the same but no greater rights and has the same but no greater privileges as, and except as otherwise provided by this chapter, is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic corporation of like character.

(c) This chapter does not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.

History. Acts 1987, No. 958, § 64-1505.

CASE NOTES

Cited: Citicorp Indus. Credit, Inc. v. Wal-Mart Stores, Inc., 305 Ark. 530, 809 S.W.2d 815 (1991).

4-27-1506. Corporate name of foreign corporation.

(a) If the corporate name of a foreign corporation does not satisfy the requirements of § 4-27-401, the foreign corporation to obtain or maintain a certificate of authority to transact business in this state:

(1) may add the word “corporation”, “incorporated”, “company”, or “limited”, or the abbreviation “corp.”, “inc.”, “co.”, or “ltd.”, to its corporate name for use in this state; or

(2) may use a fictitious name to transact business in this state if its real name is unavailable and it delivers to the Secretary of State for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(b) Except as authorized by subsections (c) and (d) of this section, the corporate name (including a fictitious name adopted because its real name is unavailable) of a foreign corporation must be distinguished upon the records of the Secretary of State from:

(1) the corporate name of a corporation incorporated or authorized to transact business in this state;

(2) a corporate name reserved or registered under § 4-27-402 or § 4-27-403;

(3) the fictitious name, adopted because its real name was unavailable, of another foreign corporation authorized to transact business in this state; and

(4) the corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state.

(c) A foreign corporation may apply to the Secretary of State for authorization to use in this state the name of another corporation (incorporated or authorized to transact business in this state) that is not distinguishable upon his records from the name applied for. The Secretary of State shall authorize use of the name applied for if:

(1) the other corporation consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying corporation; or

(2) the applicant delivers to the Secretary of State a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(d) A foreign corporation may use in this state the name (including the fictitious name) of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the foreign corporation:

- (1) has merged with the other corporation;
- (2) has been formed by reorganization of the other corporation; or
- (3) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(e) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of § 4-27-401, it may not transact business in this state under the changed name until it adopts a name satisfying the requirements of § 4-27-401 and obtains an amended certificate of authority under § 4-27-1504.

History. Acts 1987, No. 958, § 64-1506; 1987 (1st Ex. Sess.), No. 11, § 15.

4-27-1507. Registered office and registered agent of foreign corporation.

Each foreign corporation authorized to transact business in this state must continuously maintain in this state:

- (1) a registered office that may be the same as any of its places of business; and
- (2) a registered agent, who may be:
 - (i) an individual who resides in this state and whose business office is identical with the registered office;
 - (ii) a domestic corporation or not-for-profit corporation whose business office is identical with the registered office; or
 - (iii) a foreign corporation or foreign not-for-profit corporation authorized to transact business in this state whose business office is identical with the registered office.

History. Acts 1987, No. 958, § 64-1507.

RESEARCH REFERENCES

ALR. In personam jurisdiction under long-arm statute of nonresident banking institution. 9 ALR 4th 661.

4-27-1508. Change of registered office or registered agent of foreign corporation.

(a) A foreign corporation authorized to transact business in this state may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:

- (1) its name;
- (2) the street address of its current registered office;

(3) if the current registered office is to be changed, the street address of its new registered office;

(4) the name of its current registered agent;

(5) if the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent (either on the statement or attached to it) to the appointment; and

(6) that after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(b) If a registered agent changes the street address of his business office, he may change the street address of the registered office of any foreign corporation for which he is the registered agent by notifying the corporation in writing of the change and signing (either manually or in facsimile) and delivering to the Secretary of State for filing a statement of change that complies with the requirements of subsection (a) of this section and recites that the corporation has been notified of the change.

History. Acts 1987, No. 958, § 64-1508; 1987 (1st Ex. Sess.), No. 11, § 16.

4-27-1509. Resignation of registered agent of foreign corporation.

(a) The registered agent of a foreign corporation may resign his agency appointment by signing and delivering to the Secretary of State for filing the original and two (2) exact or conformed copies of a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

(b) After filing the statement, the Secretary of State shall attach the filing receipt to one (1) copy and mail the copy and receipt to the registered office if not discontinued. The Secretary of State shall mail the other copy to the foreign corporation at its principal office address shown in its most recent annual franchise tax report.

(c) The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

History. Acts 1987, No. 958, § 64-1509.

4-27-1510. Service on foreign corporation.

(a) The registered agent of a foreign corporation authorized to transact business in this state is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation.

(b) A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation at its principal office shown in its application for a certifi-

cate of authority or in its most recent annual franchise tax report if the foreign corporation:

(1) has no registered agent or its registered agent cannot with reasonable diligence be served;

(2) has withdrawn from transacting business in this state under § 4-27-1520; or

(3) has had its certificate of authority revoked under § 4-27-1531.

(c) Service is perfected under subsection (b) of this section at the earliest of:

(1) the date the foreign corporation receives the mail;

(2) the date shown on the return receipt, if signed on behalf of the foreign corporation; or

(3) five (5) days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

(d) This section does not prescribe the only means, or necessarily the required means, of serving a foreign corporation.

History. Acts 1987, No. 958, § 64-1510.

RESEARCH REFERENCES

ALR. In personam jurisdiction under long-arm statute of nonresident banking institution. 9 ALR 4th 661.

4-27-1511 — 4-27-1519. [Reserved.]

Part B: Withdrawal

4-27-1520. Withdrawal of foreign corporation.

(a) A foreign corporation authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the Secretary of State.

(b) A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the Secretary of State for filing. The application must set forth:

(1) the name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(2) that it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(3) that it revokes the authority of its registered agent to accept service on its behalf and appoints the Secretary of State as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state;

(4) a mailing address to which the Secretary of State may mail a copy of any process served on him under subdivision (b)(3) of this section; and

(5) a commitment to notify the Secretary of State in the future of any change in its mailing address.

(c) After the withdrawal of the corporation is effective, service of process on the Secretary of State under this section is service on the foreign corporation. Upon receipt of process, the Secretary of State shall mail a copy of the process to the foreign corporation at the mailing address set forth under subsection (b) of this section.

History. Acts 1987, No. 958, § 64-1511.

4-27-1521 — 4-27-1529. [Reserved.]

Part C: Revocation of Certificate of Authority

4-27-1530. Grounds for revocation.

The Secretary of State may commence a proceeding under § 4-27-1531 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(1) the foreign corporation does not deliver its annual franchise tax report to the Secretary of State within sixty (60) days after it is due;

(2) the foreign corporation does not pay within sixty (60) days after they are due any franchise taxes or penalties imposed by this chapter or other law;

(3) the foreign corporation is without a registered agent or registered office in this state for sixty (60) days or more;

(4) the foreign corporation does not inform the Secretary of State under § 4-27-1508 or § 4-27-1509 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty (60) days of the change, resignation, or discontinuance;

(5) an incorporator, director, officer, or agent of the foreign corporation signed a document he knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing;

(6) the Secretary of State receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger.

History. Acts 1987, No. 958, § 64-1512; 1987 (1st Ex. Sess.), No. 11, § 17.

4-27-1531. Procedure for and effect of revocation.

(a) If the Secretary of State determines that one (1) or more grounds exist under § 4-27-1530 for revocation of a certificate of authority, he shall serve the foreign corporation with written notice of his determination under § 4-27-1510.

(b) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days after service of the notice is perfected under § 4-27-1510, the Secretary of State may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the foreign corporation under § 4-27-1510.

(c) The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(d) The Secretary of State's revocation of a foreign corporation's certificate of authority appoints the Secretary of State the foreign corporation's agent for service of process in any proceeding based on a cause of action which arose during the time the foreign corporation was authorized to transact business in this state. Service of process on the Secretary of State under this subsection is service on the foreign corporation. Upon receipt of process, the Secretary of State shall mail a copy of the process to the secretary of the foreign corporation at its principal office shown in its most recent annual franchise tax report or in any subsequent communication received from the corporation stating the current mailing address of its principal office, or, if none are on file, in its application for a certificate of authority.

(e) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

History. Acts 1987, No. 958, § 64-1513.

4-27-1532. Appeal from revocation.

(a) A foreign corporation may appeal the Secretary of State's revocation of its certificate of authority to the Pulaski County Circuit Court within thirty (30) days after service of the certificate of revocation is perfected under § 4-27-1510. The foreign corporation appeals by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of authority and the Secretary of State's certificate of revocation.

(b) The court may summarily order the Secretary of State to reinstate the certificate of authority or may take any other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

History. Acts 1987, No. 958, § 64-1514.

SUBCHAPTER 16 — RECORDS AND REPORTS

SECTION.

Part A: Records

- 4-27-1601. Corporate records.
4-27-1602. Inspection of records by shareholders.
4-27-1603. Scope of inspection right.
4-27-1604. Court-ordered inspection.
4-27-1605 — 4-27-1619. [Reserved.]

SECTION.

Part B: Reports

- 4-27-1620. Financial statements for shareholders.
4-27-1621. Other reports to shareholders.
4-27-1622. Annual franchise tax report for Secretary of State.

Part A: Records**4-27-1601. Corporate records.**

(a) A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

(b) A corporation shall maintain appropriate accounting records.

(c) A corporation or its agent shall maintain a record of its shareholders, in a form that permits preparation of a list of the names and addresses of all shareholders, in alphabetical order by class of shares showing the number and class of shares held by each.

(d) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(e) A corporation shall keep a copy of the following records at its principal office:

(1) its articles or restated articles of incorporation and all amendments to them currently in effect;

(2) its bylaws or restated bylaws and all amendments to them currently in effect;

(3) resolutions adopted by its board of directors creating one (1) or more classes or series of shares, and fixing their relative rights, preferences, and limitations, if shares issued pursuant to those resolutions are outstanding;

(4) the minutes of all shareholders' meetings, and records of all action taken by shareholders without a meeting, for the past three (3) years;

(5) all written communications to shareholders generally within the past three (3) years, including the financial statements furnished for the past three (3) years under § 4-27-1620;

(6) a list of the names and business addresses of its current directors and officers; and

(7) its most recent annual franchise tax report delivered to the Secretary of State under § 4-27-1622.

History. Acts 1987, No. 958,
§ 64-1601.

4-27-1602. Inspection of records by shareholders.

(a) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in § 4-27-1601(e) if he gives the corporation written notice of his demand at least five (5) business days before the date on which he wishes to inspect and copy.

(b) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection (c) of this section and gives the corporation written notice of his demand at least five (5) business days before the date on which he wishes to inspect and copy:

(1) excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders, and records of action taken by the shareholders or board of directors without a meeting, to the extent not subject to inspection under subsection (a) of this section;

(2) accounting records of the corporation; and

(3) the record of shareholders.

(c) A shareholder may inspect and copy the records described in subsection (b) of this section only if:

(1) his demand is made in good faith and for a proper purpose;

(2) he describes with reasonable particularity his purpose and the records he desires to inspect; and

(3) the records are directly connected with his purpose.

(d) The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws.

(e) This section does not affect:

(1) the right of a shareholder to inspect records under § 4-27-720 or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant;

(2) the power of a court, independently of this chapter, to compel the production of corporate records for examination.

(f) For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or by a nominee on his behalf.

History. Acts 1987, No. 958, § 64-1602; 1987 (1st Ex. Sess.), No. 11, § 18.

4-27-1603. Scope of inspection right.

(a) A shareholder's agent or attorney has the same inspection and copying rights as the shareholder he represents.

(b) The right to copy records under § 4-27-1602 includes, if reasonable, the right to receive copies made by photographic, xerographic, or other means.

(c) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the shareholder. The charge may not exceed the estimated cost of production or reproduction of the records.

(d) The corporation may comply with a shareholder's demand to inspect the record of shareholders under § 4-27-1602(b)(3) by providing him with a list of its shareholders that was compiled no earlier than the date of the shareholder's demand.

History. Acts 1987, No. 958, § 64-1603.

4-27-1604. Court-ordered inspection.

(a) If a corporation does not allow a shareholder who complies with § 4-27-1602(a) to inspect and copy any records required by that subsection to be available for inspection, the circuit court of the county where the corporation's principal office (or, if none in this state, its registered office) is located may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.

(b) If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other record, the shareholder who complies with § 4-27-1602(b) and (c) may apply to the circuit court in the county where the corporation's principal office (or, if none in this state, its registered office) is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(c) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the shareholder's costs (including reasonable counsel fees) incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.

(d) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding shareholder.

History. Acts 1987, No. 958, § 64-1604.

4-27-1605 — 4-27-1619. [Reserved.]**Part B: Reports****4-27-1620. Financial statements for shareholders.**

(a) A corporation shall furnish its shareholders annual financial statements, which may be consolidated or combined statements of the corporation and one (1) or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year, an income statement for that year, and a statement of changes in shareholders' equity for the year unless that information appears elsewhere in the financial statements. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements must also be prepared on that basis.

(b) If the annual financial statements are reported upon by a public accountant, his report must accompany them. If not, the statements must be accompanied by a statement of the president or the person responsible for the corporation's accounting records:

(1) stating his reasonable belief whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

(2) describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

(c) A corporation shall mail the annual financial statements to each shareholder within one hundred twenty (120) days after the close of each fiscal year. Thereafter, on written request from a shareholder who was not mailed the statements, the corporation shall mail him the latest financial statements.

History. Acts 1987, No. 958, § 64-1605.

4-27-1621. Other reports to shareholders.

If a corporation indemnifies or advances expenses to a director under § 4-27-850 in connection with a proceeding by or in the right of the corporation, the corporation shall report the indemnification or advance in writing to the shareholders with or before the notice of the next shareholders' meeting.

History. Acts 1987, No. 958, § 64-1606.

4-27-1622. Annual franchise tax report for Secretary of State.

(a) Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the Secretary of State for filing an annual franchise tax report that sets forth:

- (1) the name of the corporation and the state or country under whose law it is incorporated;
 - (2) the address of its registered office and the name of its registered agent at that office in this state;
 - (3) the address of its principal office;
 - (4) the names and business addresses of its directors and principal officers;
 - (5) a brief description of the nature of its business;
 - (6) the total number of authorized shares, itemized by class and series, if any, within each class;
 - (7) the total number of issued and outstanding shares, itemized by class and series, if any, within each class; and
 - (8) such other information as the Secretary of State may specify in a form promulgated pursuant to § 4-27-121A.
- (b) The requirements as to the applicability, use, and filing of the annual franchise tax report shall be as set forth in § 26-54-101 et seq.

History. Acts 1987, No. 958, § 64-1607.

SUBCHAPTER 17 — TRANSITION PROVISIONS

SECTION.

- 4-27-1701. Application to existing domestic corporations.
- 4-27-1702. Application to qualified foreign corporations.

SECTION.

- 4-27-1703. Saving provisions.
- 4-27-1704. Severability.
- 4-27-1705. Fees.
- 4-27-1706. Effective date.

A.C.R.C. Notes. Acts 1987 (1st Ex. Sess.), No. 11, § 19, provided, in part, that § 4-27-1705 is amended to provide that, except as applicable to those existing domestic corporations not irrevocably elect-

ing to be governed by the provisions of Acts 1987, No. 958, this act repeals all laws or parts of laws contained in the acts enumerated in § 19.

4-27-1701. Application to existing domestic corporations.

This chapter applies to all domestic corporations incorporated on or after its effective date as specified in § 4-27-1706. A corporation incorporated prior to such effective date under any general statute of this state providing for incorporation of corporations for profit may elect to be governed by the provisions of this chapter by amending its articles of incorporation to provide that it shall be so governed. Such election may be made at any time on or after midnight, December 31, 1987, but once made shall be irrevocable. The amendment to the articles of incorporation effecting such election must be approved by the affirmative vote of the holders of at least two-thirds ($\frac{2}{3}$) of the shares of each outstanding class of the corporation's capital stock. Domestic corporations existing prior to midnight, December 31, 1987, which do not elect

to be governed by its provisions shall continue to be governed by preexisting law.

History. Acts 1987, No. 958, § 64-1701.

4-27-1702. Application to qualified foreign corporations.

A foreign corporation authorized to transact business in this state at midnight, December 31, 1987, is subject to this chapter but is not required to obtain a new certificate of authority to transact business under this chapter.

History. Acts 1987, No. 958, § 64-1702.

4-27-1703. Saving provisions.

(a) Except as provided in subsection (b) of this section, the repeal of a statute by this chapter does not affect:

(1) the operation of the statute or any action taken under it before its repeal;

(2) any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal;

(3) any violation of the statute, or any penalty, forfeiture, or punishment incurred because of the violation, before its repeal;

(4) any proceeding, reorganization, or dissolution commenced under the statute before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the statute as if it had not been repealed.

(b) If a penalty or punishment imposed for violation of a statute repealed by this chapter is reduced by this chapter, the penalty or punishment, if not already imposed, shall be imposed in accordance with this chapter.

History. Acts 1987, No. 958, § 64-1703.

4-27-1704. Severability.

If any provision of this chapter or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

History. Acts 1987, No. 958, § 64-1704.

4-27-1705. Fees.

The fees chargeable by the Secretary of State for services under § 4-26-101 et seq. shall be as follows:

(1) Articles of incorporation	\$ 50.00
(2) Amendment to articles of incorporation	50.00
(3) Articles of merger or consolidation	100.00
(4) Corporation's statement of registered agent or office, or both	25.00
(5) Agent's statement of change of registered office/agent for each affected corporation not to exceed a total of	200.00
(6) Application for fictitious name	25.00
(7) Application for reserved name	25.00
(8) For any other filing under this chapter with annexed certificate	25.00
(9) For any certificate pursuant to § 4-26-106 or § 4-26-207 or any other certificate	25.00
(10) For furnishing a certified copy of any document, fifty cents (50¢) per page and five dollars (\$5.00) for the certificate thereto	
(11) For receiving service of process on behalf of a corporation	25.00
(12) For receiving service of process on behalf of individuals	10.00

History. Acts 1987, No. 958, § 64-1705; 1987 (1st Ex. Sess.), No. 11, § 19.

Publisher's Notes. Subdivision (10) is printed as enacted.

4-27-1706. Effective date.

This chapter shall be effective on and after midnight, December 31, 1987.

History. Acts 1987, No. 958, § 64-1706.

CHAPTER 28

NONPROFIT ORGANIZATIONS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ARKANSAS NONPROFIT CORPORATION ACT.
3. MERGER OR CONSOLIDATION OF NONPROFIT CORPORATIONS.
4. SOLICITATION OF CHARITABLE CONTRIBUTIONS.
5. UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT.

A.C.R.C. Notes. References to “this chapter” in subchapters 1-4 may not apply to subchapter 5, which was enacted subsequently.

References to “this chapter” in §§ 4-28-101 — 4-28-103 and subchapters 2 — 5 may not apply to § 4-28-104 which was enacted subsequently.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

4-28-101. Fairs and associations of public nature.

4-28-102. Religious, literary, benevolent, etc., corporations — Fees.

SECTION.

4-28-103. Statutory life insurance beneficiaries.

4-28-104. Audit of nonprofit organization.

Cross References. Business Corporation Act of 1987, § 4-27-101 et seq.

Business corporations, formation, § 4-26-201 et seq.

Immunity from tort liability, § 16-120-101 et seq.

Effective Dates. Acts 1875, No. 77, § 53: effective on passage.

Acts 1875 (Adj. Sess.), No. 77, § 3: effective on passage.

Acts 1881, No. 40, § 3: effective on passage.

Acts 1987, No. 240, § 4: Oct. 1, 1987.

Acts 1993, No. 1147, § 1705: January 1, 1994.

4-28-101. Fairs and associations of public nature.

(a) Agricultural and mechanical fair associations and other associations of a public nature and designed to promote the public good may be constituted bodies politic and corporate in the manner provided by law for business corporations, and the capital stock may be divided and held in shares of two dollars (\$2.00) each.

(b) No profits or dividends shall ever be declared or paid under this section; however, dividends may be paid to the amount of money paid in by the stockholders on their respective shares.

(c) This section shall not be construed to prohibit the associations from being chartered and incorporated with the powers and privileges and in the manner provided by law.

History. Acts 1875 (Adj. Sess.), No. 77, §§ 1-3, p. 152; C. & M. Dig., §§ 1796, 1797; Pope's Dig., §§ 2260, 2261; A.S.A. 1947, §§ 64-1309 — 64-1311.

CASE NOTES

Stock.

No permit is necessary to sell stock of a corporation organized under this section.

Saxon v. Arkansas State Fair Ass'n, 181 Ark. 750, 27 S.W.2d 505 (1930).

4-28-102. Religious, literary, benevolent, etc., corporations — Fees.

There shall be allowed and collected by the Secretary of State, and accounted for by him or her to the State Treasury in the same manner as all other fees are or shall be directed to be accounted for by state officers, a fee for receiving each draft of articles, or charter, of a private incorporation created for religious, literary, benevolent, or scientific purposes and not for purposes of pecuniary profit, directly or indirectly, of two dollars and fifty cents (\$2.50).

History. Acts 1875, No. 77, § 1, p. 167; 1881, No. 40, § 1, p. 73; C. & M. Dig., § 1818; A.S.A. 1947, § 64-1312. **Cross References.** Fees to be paid to Secretary of State, § 4-28-223.

4-28-103. Statutory life insurance beneficiaries.

(a) For the purposes of this section, “public funds” means all federal, state, county, municipal, or other funds received from any taxing unit.

(b)(1) Nonprofit corporations shall not use public funds to purchase key-man life insurance as a form of deferred compensation.

(2) The insured employee shall not receive any cash values or other benefits from the purchase of key-man life insurance with public funds.

(3) Nonprofit corporations purchasing key-man life insurance with public funds shall not transfer ownership or any other rights under such policies directly or indirectly to the insured.

(c) Nonprofit corporations violating subsection (b) of this section shall not be eligible to receive any public funds for a period of two (2) years from the date the violations are discovered.

(d)(1)(A) Notwithstanding any other law or regulation to the contrary, any religious, educational, charitable, or benevolent institution, organization, corporation, association, or trust, including, but not limited to, charitable remainder trusts, may be named beneficiary or owner, or both, of the policy or contract by any applicant for insurance upon his or her own life in any policy of life insurance issued by any life insurance company authorized to do business in this state or in the state of domicile of the applicant for insurance.

(B) The applicant for insurance shall be deemed to have an unlimited insurable interest in his or her own life and is entitled to name any of the institutions as beneficiary of the insurance, and the beneficiaries or owners, or both, shall have the right to receive all death benefits provided for by the policy and to exercise the rights of ownership if granted ownership.

(2) As to any life insurance policies heretofore issued by insurers naming any of the aforementioned institutions as beneficiaries or owners, or both, if the applicant for insurance was also the insured, the beneficiaries or owners, or both, shall be entitled to receive all death benefits provided by the policy and to exercise the rights of ownership if granted ownership.

History. Acts 1987, No. 240, §§ 1-3; 1993, No. 1147, § 1803.

4-28-104. Audit of nonprofit organization.

(a) For purposes of this section:

(1) “State financial assistance” means all state funds given, granted, or disbursed to a nonprofit organization pursuant to appropriation laws to provide services for the citizens of this state or for capital projects; and

(2) "Nonprofit organization" means an organization exempt from taxation under § 26 U.S.C. 501(c)(3).

(b)(1) Any nonprofit organization receiving state financial assistance shall be subject to audit of its receipt and expenditure of state financial assistance by the Division of Legislative Audit.

(2) An audit shall be conducted by the Division of Legislative Audit only after approval by the Legislative Joint Auditing Committee.

History. Acts 2001, No. 958, § 1.

A.C.R.C. Notes. References to "this chapter" in §§ 4-28-101 — 4-28-103 and

subchapters 2 — 5 may not apply to this section which was enacted subsequently.

SUBCHAPTER 2 — ARKANSAS NONPROFIT CORPORATION ACT

SECTION.

- 4-28-201. Title.
- 4-28-202. Definitions.
- 4-28-203. Applicability of subchapter.
- 4-28-204. Effect on preexisting corporations.
- 4-28-205. Lawful purposes.
- 4-28-206. Articles of incorporation generally.
- 4-28-207. Charitable, religious, etc., organizations — Amendment of articles of incorporation by operation of law.
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SECTION.

- 4-28-214. Registered agent — Service of process.
- 4-28-215. Compensation and reimbursement to members, directors, officers, etc.
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- 4-28-217. Regulations by state agencies applicable.
- 4-28-218. Books and accounting records.
- 4-28-219. Shares of stock and dividends prohibited.
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- 4-28-221. Admission of foreign corporation.
- 4-28-222. Involuntary dissolution.
- 4-28-223. Fees to be paid to Secretary of State.
- 4-28-224. Corporation's acceptance of votes.

A.C.R.C. Notes. Acts 1987, No. 406, § 1, provided that any nonprofit corporation organized prior to March 7, 1963, which wishes to exist and function under the provisions of this subchapter shall, within one (1) year after March 25, 1987, file with the Secretary of State a copy of the court order or action whereby it was granted corporate status and pay to the Secretary of State a filing fee of \$10.00.

Acts 1989 (3rd Ex. Sess.), No. 57, § 1, provided: "Any nonprofit corporation organized prior to March 7, 1963, which wishes to exist and function under the provisions of Arkansas Code 4-28-201 through 4-28-409, and laws amendatory or supplemental thereto shall on or before July 1, 1990, file with the Secretary of

State a copy of the court order or action whereby it was granted corporate status and shall pay to the Secretary of State a filing fee of fifty dollars (\$50.00)."

Cross References. Registration of public obligations, §§ 19-9-401 et seq.

Effective Dates. Acts 1963, No. 176, § 24: Mar. 7, 1963. Emergency clause provided: "It has been found and is declared by the General Assembly of the State of Arkansas that nonprofit corporations are not required to register with the Secretary of State, keep proper accounting records, and are subject to no state regulation, thereby giving rise to the unfettered practices of fraud upon the public of Arkansas and the degradation of the purposes for which such corporations might be formed;

that there is an urgent need for protection of the public and encouragement of worthy organizations. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval."

Acts 1971, No. 728, § 6: Apr. 28, 1971. Emergency clause provided: "The General Assembly finding that private foundations immediately and urgently need the amendments to their governing instruments contained in this Act in order to remain exempt from federal taxation, an emergency, therefore, is hereby declared to exist, and this Act being necessary for the preservation of the public peace and welfare, shall be effective from and after its passage and approval."

Acts 1973, No. 42, § 3: Jan. 31, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that uncertainty exists concerning the status of nonprofit corporations chartered prior to Act 176 of 1963, and that this Act is immediately necessary to clarify the same. Therefore, an emergency is declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall take effect and be in force from the date of its approval."

Acts 1987, No. 406, § 3: Mar. 25, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that uncertainty and confusion

exist concerning the status of some nonprofit corporations which were created prior to 1963 and which have not qualified to exist and function under Act 176 of 1963, as amended; that many of such organizations are worthy charitable and civic organizations and it is urgent that this act be given effect immediately to enable such organizations to file appropriate documents with the Secretary of State and thereby clarify their status as a nonprofit corporation. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 1068, § 6: Apr. 17, 1987. Emergency clause provided: "It is hereby found and determined by the Arkansas General Assembly that the fees charged by the Secretary of State for the filing of corporation and limited partnership applications and other papers are inadequate to compensate the State for the proper record keeping required and therefore these fees should be raised sufficiently as set forth herein to pay for this proper record keeping. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the preservation of the public peace, health, and safety, shall be in effect from and after its passage and approval."

Acts 1993, No. 1147, § 1705: Jan. 1, 1994.

RESEARCH REFERENCES

ALR. Restrictions on right of legal services corporation or "public interest" law firm to practice. 26 ALR 4th 614.

Right of member of nonprofit association or corporation to possession, inspection, or use of membership lists. 37 ALR 4th 1206.

Exemption of nonprofit theater or concert hall from local property taxation. 42 ALR 4th 614.

Exemption from real property taxation of residential facilities maintained by hospitals for patients, staff, or others. 61 ALR 1105.

Attorney's obligation to share fee award with party representing public interest. 43 ALR 5th 793.

Exemption of charitable or educational organization from sales or use tax. 69 ALR 5th 477.

Ark. L. Rev. Charitable Immunity — Contracts, Torts, Rule of Property and Prospective Overruling, 16 Ark. L. Rev. 289.

UALR L.J. Mathews, Corporate Statutes—Which One Applies?, 13 UALR L.J. 87.

Harris, the Nonprofit Corporation Act of 1993: Considering the Election to Apply the New Law to Old Corporations, 16 UALR L.J. 1.

CASE NOTES

Cited: Vincent v. United States, 383 F. Supp. 912 (E.D. Ark. 1979); J.W. Resort, Supp. 471 (E.D. Ark. 1974); Gilbreath v. Inc. v. First Am. Nat'l Bank, 3 Ark. App. East Ark. Planning & Dev. Dist., Inc., 471 290, 625 S.W.2d 557 (1981).

4-28-201. Title.

Sections 4-28-201 — 4-28-206 and 4-28-209 — 4-28-224 shall be known as the “Arkansas Nonprofit Corporation Act”.

History. Acts 1963, No. 176, § 1;
A.S.A. 1947, § 64-1901.

4-28-202. Definitions.

As used in §§ 4-28-201 — 4-28-206 and 4-28-209 — 4-28-224, unless the context otherwise requires:

(1) “Board of directors” means the group of persons vested with the management of the affairs of the corporation.

(2) “Corporation” means a domestic corporation not for profit subject to the provisions of §§ 4-28-201 — 4-28-206 and 4-28-209 — 4-28-224;

(3) “Foreign corporation” means a corporation not for profit organized under laws other than the laws of this state; and

(4) “Not-for-profit corporation” means a corporation no part of the income of which is distributable to its members, directors, or officers. Sections 4-28-201 — 4-28-206 and 4-28-209 — 4-28-224 shall apply only to corporations organized under the laws of this state authorizing organization of nonprofit corporations.

History. Acts 1963, No. 176, § 2;
A.S.A. 1947, § 64-1902.

CASE NOTES

Cited: Allen v. Malvern Country Club,
295 Ark. 65, 746 S.W.2d 546 (1988).

4-28-203. Applicability of subchapter.

(a) The provisions of §§ 4-28-201 — 4-28-206 and 4-28-209 — 4-28-224 relating to domestic corporations shall apply to:

(1) All corporations organized hereunder; and

(2) All not-for-profit corporations heretofore organized under any act hereby repealed, for the purposes for which a corporation might be organized under §§ 4-28-201 — 4-28-206 and 4-28-209 — 4-28-224.

(b) The provisions of §§ 4-28-201 — 4-28-206 and 4-28-209 — 4-28-224 relating to foreign corporations shall apply to all foreign not-for-profit corporations conducting affairs in this state for purposes for which a corporation might be organized under §§ 4-28-201 — 4-28-206 and 4-28-209 — 4-28-224. However, §§ 4-28-201 — 4-28-206

and 4-28-209 — 4-28-224 shall not apply to any corporation whose membership is composed of corporations which file annual statements with a department or agency of this or some other state.

History. Acts 1963, No. 176, § 3;
A.S.A. 1947, § 64-1903.

CASE NOTES

Cited: Giss v. Apple, 239 Ark. 1124, 396 S.W.2d 813 (1965); Allen v. Malvern Country Club, 295 Ark. 65, 746 S.W.2d 546 (1988).

4-28-204. Effect on preexisting corporations.

(a) The provisions of §§ 4-28-201 — 4-28-206 and 4-28-209 — 4-28-224 shall in no way affect any nonprofit corporation chartered under and in accordance with the laws of this state existing prior to March 7, 1963.

(b) Any such nonprofit corporation organized prior to March 7, 1963, and which has not filed a copy of the order or action whereby it was granted corporate status under the then existing law may file a certified copy of the order or action from the clerk of the court wherein the authority was granted, together with a filing fee of ten dollars (\$10.00), with the Secretary of State, and the filing shall evidence the incorporation and shall entitle the organization to recognition of its legal status, the same as one formed under the provisions of §§ 4-28-201 — 4-28-206 and 4-28-209 — 4-28-224.

History. Acts 1963, No. 176, § 22;
1973, No. 42, § 1; A.S.A. 1947, § 64-1921.

CASE NOTES

ANALYSIS

In general.
Country clubs.

In General.

Although section 2 of the 1973 amendment used the mandatory wording "shall" when providing for a two year filing period, it did so only in reference to preexisting corporations "wishing to take advantage of" the provisions of this section; by implication, this fact also means that those not wishing to take advantage of those provisions are not required to file. A similar act was passed in 1987; so had the

legislature intended termination of corporations that failed to file within two years of the 1973 amendment, there would be no corporations in existence to which Act 406 of 1987 could apply, since it applies only to pre-1963 corporations which had not yet filed with the Secretary of State. *Wye Community Club, Inc. v. Harmon*, 26 Ark. App. 247, 764 S.W.2d 55 (1989).

Country Clubs.

There is not now, nor has there ever been, statutory authority for the issuance of stock by a country club. *Allen v. Malvern Country Club*, 295 Ark. 65, 746 S.W.2d 546 (1988).

4-28-205. Lawful purposes.

Corporations may be organized under §§ 4-28-201 — 4-28-206 and 4-28-209 — 4-28-224 for any lawful purpose including, without being

limited to any one (1) or more of the following purposes: charitable; benevolent; eleemosynary; educational; civic; patriotic; political; religious; social; fraternal; literary; cultural; athletic; scientific; agricultural; horticultural; animal husbandry; and professional, commercial, industrial, or trade association. However, labor unions, rural electric corporations, cooperative agricultural or marketing associations, etc., organized for either direct or indirect financial gain or advantage, and any cooperative associations coming within the purview of §§ 4-30-101 — 4-30-117, 4-30-201, 4-30-202, and 4-30-204 — 4-30-207 shall be governed by the particular acts applicable to such associations.

History. Acts 1963, No. 176, § 4;
A.S.A. 1947, § 64-1904.

CASE NOTES

Members.

Business corporations and persons engaged in commercial ventures are not precluded from membership in nonprofit cor-

porations. *Rohrscheib v. Barton-Lexa Water Ass'n*, 246 Ark. 145, 437 S.W.2d 230 (1969).

4-28-206. Articles of incorporation generally.

(a) Any association of persons desirous of becoming incorporated under the provisions of §§ 4-28-201 — 4-28-206 and 4-28-209 — 4-28-224 shall file with the circuit court of the county in which the main office or principal place of business of the proposed corporation is located or proposed to be located signed and verified articles of incorporation, which shall set forth the following:

- (1) The name of the corporation;
- (2) The period of duration, which may be perpetual;
- (3) The purposes for which the corporation is organized;
- (4) Any provisions, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision for distribution of assets on dissolution or final liquidation;
- (5) The address of its main office or principal place of business, and the name of its registered agent at that address;
- (6) The number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as the initial directors; and
- (7) The name and address of each incorporator.

(b) If the circuit court finds that the articles of incorporation conform to law and that the incorporation is for a lawful purpose and is in the best interests of the public, the court may issue an order approving the incorporation of the proposed association of persons.

(c) If the court approves the incorporation, the articles of incorporation in duplicate, signed and verified, and a copy of the order of the court approving the incorporation shall be transmitted to the Secretary of State, who shall, when all fees have been paid as prescribed in §§ 4-28-201 — 4-28-206 and 4-28-209 — 4-28-224:

- (1) File the original of the articles in his or her office; and
- (2) Issue a certificate of incorporation to which he or she shall affix the other copy of the articles endorsed with the word “Filed” and the month, day, and year of the filing and return the certificate of incorporation to the incorporators or their representative.
- (d) A corporation may amend its articles of incorporation from time to time, provided that the amendments are lawful under §§ 4-28-201 — 4-28-206 and 4-28-209 — 4-28-224. A copy of all amendments shall be filed with the Secretary of State within thirty-(30) days after their passage.

History. Acts 1963, No. 176, §§ 5, 6;
A.S.A. 1947, §§ 64-1905, 64-1906.

CASE NOTES

ANALYSIS

Jurisdiction.
Members.

Jurisdiction.

The chancery court properly had jurisdiction in injunction proceedings by one non-profit organization against another since the injunction was an equitable remedy; the circuit court did not have jurisdiction simply because that is where non-profit organizations file their articles of

incorporation. *Fort Smith Symphony Orchestra, Inc. v. Fort Smith Symphony Ass’n*, 285 Ark. 284, 686 S.W.2d 418 (1985).

Members.

Membership in nonprofit corporations is not restricted to natural persons. *Rohrscheib v. Barton-Lexa Water Ass’n*, 246 Ark. 145, 437 S.W.2d 230 (1969).

Cited: *Wye Community Club, Inc. v. Harmon*, 26 Ark. App. 247, 764 S.W.2d 55 (1989).

4-28-207. Charitable, religious, etc., organizations — Amendment of articles of incorporation by operation of law..

Notwithstanding any provision of Arkansas law or in the articles of incorporation to the contrary, the articles of incorporation of each nonprofit corporation organized under the laws of this state which is an exempt charitable, religious, literary, educational, or scientific organization as described in section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3), shall be deemed to contain the following provisions:
“Upon the dissolution of the corporation, the board of trustees shall, after paying or making provision for the payment of all of the liabilities of the corporation, dispose of all of the assets of the corporation exclusively for the purposes of the corporation in such manner, or to such charitable, educational, religious, literary, or scientific purposes as shall at the time qualify as an exempt organization or organizations under section 501(c)(3) of the Internal Revenue Code of 1954, or the corresponding provision of any future United States Internal Revenue Law, as the board of trustees shall determine. Any such assets not so disposed of shall be disposed of by the circuit court of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said court

shall determine, which are organized and operated exclusively for such purposes.”

History. Acts 1977, No. 181, § 1;
A.S.A. 1947, § 64-1924.

RESEARCH REFERENCES

UALR L.J. Survey of Arkansas Law,
Business Law, 1 UALR L.J. 118.

CASE NOTES

Cited: Arkansas Uniform & Linen Supply Co. v. Institutional Servs. Corp., 287 Ark. 370, 700 S.W.2d 358 (1985).

4-28-208. Private foundations — Amendment of articles of incorporation by operation of law.

(a) Notwithstanding any provision in the laws of this state, including the provisions of the Arkansas Nonprofit Corporation Act, §§ 4-28-201 — 4-28-206 and 4-28-209 — 4-28-224, or in the articles of incorporation to the contrary, except as provided in subsection (c) of this section, the articles of incorporation of each corporation which is a “private foundation” as defined in section 509 of the Internal Revenue Code of 1954, 26 U.S.C. § 509, shall be deemed to contain the following provisions:

“The corporation shall make distributions at such time and in such manner as not to become subject to the tax on undistributed income imposed by section 4942 of the Internal Revenue Code of 1954; the corporation shall not engage in any act of self-dealing (as defined in section 4941(d) of the Code) which would subject it to tax under section 4941 of the Code; the corporation shall not retain any excess business holdings (as defined in section 4943(c) of the Code) which would subject it to tax under section 4943 of the Code; the corporation shall not make any investments in such manner as to subject it to tax under section 4944 of the Code; and the corporation shall not make any taxable expenditures (as defined in section 4945(d) of the Code) which would subject it to tax under section 4945 of the Code.”

(b) With respect to any such corporation organized prior to January 1, 1970, subsection (a) of this section shall apply only for its taxable years beginning on or after January 1, 1972.

(c) The articles of incorporation of any corporation described in subsection (a) of this section may be amended to expressly exclude the application of this section, and in the event of amendment, this section shall not apply to that corporation.

(d) Nothing contained in this section shall impair the rights and powers of the courts or any officer, agency, or department of this state with respect to any corporation.

(e) As used in this section, unless the context requires otherwise, all references to “the Code” are to the Internal Revenue Code of 1954, 26

U.S.C. § 1 et seq., and all references to specific sections of the Code include future amendments to the sections and corresponding provisions of any future federal tax laws.

History. Acts 1971, No. 728, §§ 1, 3; A.S.A. 1947, §§ 64-1922, 64-1923.

Publisher's Notes. Acts 1971, No. 728, § 3, is also codified as § 28-72-301.

U.S. Code. Sections 4941, 4941(d), 4942, 4943, 4943(c), 4944, 4945, and

4945(d) of the Internal Revenue Code of 1954 referred to in this section are codified as 26 U.S.C. §§ 4941, 4941(d), 4942, 4943, 4943(c), 4944, 4945, and 4945(d), respectively.

4-28-209. Powers.

Each corporation shall have power:

- (1) To have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation;
- (2) To sue and be sued, complain, and defend in its corporate name;
- (3) To purchase, take, receive, lease, take by gift, devise, or bequest, or otherwise acquire, own, hold, improve, use, and otherwise deal in and with real or personal property or any interest therein, wherever situated;
- (4) To sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;
- (5) To make contracts and incur liabilities, borrow money, issue its notes, bonds, and other obligations, act as a trustee, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises, and income;
- (6) To manage its internal affairs in any desired manner so long as the provisions of §§ 4-28-201 — 4-28-206 and 4-28-209 — 4-28-224 or other law are not violated; and
- (7) To do any and all things necessary, convenient, useful, or incidental to the attainment of its purposes as fully and to the same extent as natural persons lawfully might or could do so long as consistent with the provisions of §§ 4-28-201 — 4-28-206 and 4-28-209 — 4-28-224.

History. Acts 1963, No. 176, § 7; A.S.A. 1947, § 64-1907; Acts 1993, No. 1147, § 1801.

CASE NOTES

Sale, Exchange, Etc., of Property.

In the absence of corporate rules to the contrary it is necessary that a majority of the members of a nonprofit corporation, having voting rights, approve the sale and exchange of all its property and facilities.

Giss v. Apple, 239 Ark. 1124, 396 S.W.2d 813 (1965).

Cited: Rohrscheib v. Barton-Lexa Water Ass'n, 246 Ark. 145, 437 S.W.2d 230 (1969); Cammack v. Chalmers, 284 Ark. 161, 680 S.W.2d 689 (1984).

4-28-210. Members.

(a) A corporation may have one (1) or more classes of members, or may have no members, as provided in the articles of incorporation.

(b)(1) If a membership fee is collected, a serially numbered certificate evidencing the membership fee shall be issued.

(2) The records of the corporation shall clearly indicate the amount of the fee collected for each serially numbered certificate of membership.

(3) If honorary membership certificates are issued, the records of the corporation shall reflect each and every one issued.

History. Acts 1963, No. 176, § 14;
A.S.A. 1947, § 64-1914.

CASE NOTES

Eligibility.

Business corporations and persons engaged in commercial ventures for profit are not precluded from membership in nonprofit corporations. *Rohrscheib v. Barton-Lexa Water Ass'n*, 246 Ark. 145, 437 S.W.2d 230 (1969).

Membership in nonprofit corporations organized under this subchapter is not limited to natural persons. *Rohrscheib v. Barton-Lexa Water Ass'n*, 246 Ark. 145, 437 S.W.2d 230 (1969).

Cited: *Corner, Inc. v. State*, 257 Ark. 525, 518 S.W.2d 506 (1975).

4-28-211. Board of directors.

(a) The directors constituting the first board of directors shall be named in the articles of incorporation and shall hold office until their successors have been elected and qualified. Thereafter, the board of directors shall be elected by vote of the entire membership of the corporation.

(b) The number of directors shall be fixed by the articles of incorporation except that they shall not be fewer than three (3).

(c) The terms of office of the board of directors shall be fixed by the articles of incorporation. However, the terms of office for a perpetually existing corporation shall be not less than one (1) year nor more than six (6) years, and the terms of office for a corporation of limited duration shall be for not more than one-third ($\frac{1}{3}$) of the stated period of duration.

(d) Nothing contained in this section shall prevent the staggering of the terms of office of the board of directors, but in no case may a director or directors hold office for longer than his or her specified term, except by reelection as provided in the articles of incorporation and in a manner consistent with §§ 4-28-201 — 4-28-206 and 4-28-209 — 4-28-224.

History. Acts 1963, No. 176, § 10;
A.S.A. 1947, § 64-1910.

4-28-212. Voting.

(a) Each member shall be entitled to one (1) vote in the election of the board of directors. Where more than one (1) membership is held by a single entity, the member shall be entitled to one (1) vote for each such membership.

(b) On such other matters as may be subject to vote of the members, the voting right shall be as provided in the articles of incorporation or bylaws.

(c)(1) In all matters as may be subject to the vote of the members, a member may vote in person or by proxy, unless the articles of incorporation or bylaws require such votes to be cast in person at a meeting of the membership held for such purposes.

(2) A member may appoint a proxy to vote or otherwise act for him or her by signing an appointment form, either personally or by his or her attorney-in-fact.

(3) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for eleven (11) months unless the member expressly provides for a longer term in the appointment form.

(4) An appointment of a proxy is revocable by the member at any time by written notice regular on its face to the secretary or other officer or agent authorized to tabulate votes.

(5) Subject to § 4-28-224 and to any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the member making the appointment.

History. Acts 1963, No. 176, § 11; A.S.A. 1947, § 64-1911; Acts 1989, No. 672, § 1.

CASE NOTES

ANALYSIS

Construction.
Proxies.

Construction.

The 1989 amendment, which added the second sentence in subsection (a) of this section, modified the "one man, one vote" rule, and this section now clearly allows multiple votes to be cast where more than one "membership" is held. *Morris v.*

Medin, 43 Ark. App. 29, 858 S.W.2d 142 (1993).

Proxies.

While a member's proxy may be expressly limited on the face of the appointment form, the statutory law does not provide that an association's board can arbitrarily impose such limitations on a member's proxy. *Glover v. Overstreet*, 336 Ark. 1, 984 S.W.2d 406 (1999).

4-28-213. Officers.

(a) The officers of a corporation shall consist of a president, vice president, secretary, treasurer, and such other officers and assistant officers as may be deemed necessary.

(b) The officers shall be elected or appointed in such manner and for such terms, not exceeding three (3) years, as may be prescribed in the articles of incorporation or bylaws.

(c) The articles of incorporation or bylaws may provide that one (1) or more officers of the corporation shall be ex officio members of the board of directors.

History. Acts 1963, No. 176, § 12;
A.S.A. 1947, § 64-1912.

4-28-214. Registered agent — Service of process.

(a) Each corporation shall maintain a registered agent at its principal office or place of business upon whom may be served any process, notice, or demand required or permitted by law to be served upon the corporation. The registered agent may be changed upon the filing of proper notice in the office of the Secretary of State.

(b)(1) Whenever a corporation fails to appoint or maintain a registered agent in this state or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the Secretary of State shall be an agent of the corporation upon whom any such process, notice, or demand may be served.

(2) Service on the Secretary of State shall be made by delivering to and leaving with him or her, or with any clerk having charge of the corporation department of his or her office, duplicate copies of the process, notice, or demand.

(3) The Secretary of State shall cause one (1) of the copies of the process, notice, or demand to be forwarded by registered mail or certified mail with a return receipt requested to the corporation at its last known principal office or place of business.

(4) Any service so had on the Secretary of State shall be returnable in not less than thirty (30) days.

(c) Nothing contained in this section shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a corporation in any manner permitted by law.

History. Acts 1963, No. 176, § 15;
A.S.A. 1947, § 64-1915.

4-28-215. Compensation and reimbursement to members, directors, officers, etc.

(a) A corporation may pay compensation in a reasonable amount to its members, directors, or officers for services rendered and may confer benefits upon its members in conformity with its purposes.

(b) A corporation may make reimbursement to its members, directors, officers, or employees for expenses incurred in attending to their authorized duties, the expenses to be evidenced by receipt or other proper document.

History. Acts 1963, No. 176, § 8;
A.S.A. 1947, § 64-1908.

4-28-216. Powers of Secretary of State.

(a) The Secretary of State may propound to any corporation, domestic or foreign, subject to the provisions of §§ 4-28-201 — 4-28-206 and 4-28-209 — 4-28-224, and to any officer or director thereof, such

interrogatories as may be reasonably necessary and proper to enable him or her to ascertain whether the corporation has complied with all the provisions of §§ 4-28-201 — 4-28-206 and 4-28-209 — 4-28-224.

(b) The Secretary of State shall have such other power and authority reasonably necessary to enable him or her to administer §§ 4-28-201 — 4-28-206 and 4-28-209 — 4-28-224 efficiently and to perform the duties imposed upon him or her by §§ 4-28-201 — 4-28-206 and 4-28-209 — 4-28-224.

History. Acts 1963, No. 176, § 17;
A.S.A. 1947, § 64-1917.

4-28-217. Regulations by state agencies applicable.

(a) If any nonprofit corporation established under §§ 4-28-201 — 4-28-206 and 4-28-209 — 4-28-224 engages in any activity controlled or regulated by any officer, agency, or department of this state, the activity shall be conducted in compliance with the laws and such rules and regulations as may be promulgated by the officer, agency, or department.

(b) For the purpose of furthering the organization and operation of any nonprofit corporation as authorized by §§ 4-28-201 — 4-28-206 and 4-28-209 — 4-28-224, any such officer, agency, or department of this state may issue necessary permits and licenses to the corporations and regulate the use of the permits and licenses as may be required for the operation of the corporations.

History. Acts 1963, No. 176, § 16;
A.S.A. 1947, § 64-1916.

4-28-218. Books and accounting records.

(a) Each corporation shall keep correct and complete books and records of account.

(b) All receipts of moneys and expenditures shall be properly recorded according to accepted accounting principles.

(c) A record of the proceedings of its members, board of directors, and committees shall be kept.

(d) A record of the names and addresses of its members entitled to vote shall be maintained at the principal office or place of business of the corporation.

(e) All books and records of a corporation may be inspected by any member for any proper purpose at any reasonable time.

History. Acts 1963, No. 176, § 13;
A.S.A. 1947, § 64-1913.

RESEARCH REFERENCES

UALR L.J. Note, Constitutional Law — profit Corporation Statute Prohibited, 12 Religious Freedom — Forced Disclosure of UALR L.J. 75.
Church Records Pursuant to State Non-

CASE NOTES**Churches.**

Applying this section to church held to interfere with the religious doctrine and practice of the church in violation of the First and Fourteenth Amendments to the

United States Constitution and Ark. Const., Art. 2, §§ 24 and 25. *Gipson v. Brown*, 295 Ark. 371, 749 S.W.2d 297, supp. op., reh'g denied, 296 Ark. 164A, 759 S.W.2d 791 (1988).

4-28-219. Shares of stock and dividends prohibited.

(a) A corporation shall not have or issue shares of stock.

(b) No dividend shall be paid and no part of the income of a corporation shall be distributed to its members, directors, or officers.

History. Acts 1963, No. 176, § 8;
A.S.A. 1947, § 64-1908.

CASE NOTES**Country Clubs.**

Neither under prior statutes nor under the statutes which now govern nonprofit corporations is there any statutory authority for the issuance of stock by entities such as a country club. This result is in

accordance with the general rule that nonprofit corporations simply do not issue stock and therefore have members rather than stockholders. *Allen v. Malvern Country Club*, 295 Ark. 65, 746 S.W.2d 546 (1988).

4-28-220. Loans to directors and officers prohibited.

(a) No loans shall be made by a corporation to its directors or officers.

(b) The directors of a corporation who vote for or assent to the making of a loan to a director or officer and any officers participating in the making of the loan shall be jointly and severally liable to the corporation for the amount of the loan until repayment thereof.

History. Acts 1963, No. 176, § 9;
A.S.A. 1947, § 64-1909.

4-28-221. Admission of foreign corporation.

(a) Prior to conducting affairs in this state, a foreign corporation shall first procure a certificate of authority from the Secretary of State.

(b) Application for the certificate of authority shall contain the following information:

(1) The name of the corporation and the state or country under the laws of which it is incorporated;

(2) The date of incorporation and the period of duration of the corporation;

(3) The address of its principal office or place of business;

(4) The name and address of its proposed registered agent for service of process in this state;

(5) Such additional information as may be necessary or appropriate in order to enable the Secretary of State to determine whether that corporation is entitled to a certificate of authority to conduct affairs in this state; and

(6) The purpose or purposes of the corporation which it proposes to pursue in this state.

(c) A foreign corporation upon receiving a certificate of authority under §§ 4-28-201 — 4-28-206 and 4-28-209 — 4-28-224 shall enjoy the same, but no greater, rights and privileges as a domestic corporation subject to the provisions of §§ 4-28-201 — 4-28-206 and 4-28-209 — 4-28-224 and shall be subject to the same duties, restrictions, penalties, and liabilities now or hereafter imposed upon a domestic corporation of like character.

History. Acts 1963, No. 176, § 19;
A.S.A. 1947, § 64-1919.

4-28-222. Involuntary dissolution.

A corporation incorporated under the provisions of §§ 4-28-201 — 4-28-206 and 4-28-209 — 4-28-224 may be dissolved involuntarily by a decree of the Pulaski County Circuit Court in an action filed by the Attorney General or by a decree of the circuit court of the county in which that corporation is domiciled in an action filed by the prosecuting attorney when it is established that:

(1) The corporation procured its articles of incorporation through fraud;

(2) The corporation has continued to exceed or abuse the authority conferred upon it by law;

(3) The corporation has failed for ninety (90) days to appoint and maintain a registered agent in this state;

(4) The corporation has failed to keep proper accounting records as provided in §§ 4-28-201 — 4-28-206 and 4-28-209 — 4-28-224;

(5) The corporation constitutes a public nuisance; or

(6) The corporation has violated the laws of this state or the rules and regulations of any state regulatory board or commission having jurisdiction of any activity of the corporation.

History. Acts 1963, No. 176, § 18;
A.S.A. 1947, § 64-1918.

4-28-223. Fees to be paid to Secretary of State.

The Secretary of State shall charge and collect for:

(1) Filing articles of incorporation and issuing a certificate of incorporation, fifty dollars (\$50.00);

(2) Filing an application of a foreign corporation for a certificate of authority to conduct affairs in this state and issuing a certificate of authority, three hundred dollars (\$300); and

(3) Other administration functions, one dollar (\$1.00).

History. Acts 1963, No. 176, § 20; A.S.A. 1947, § 64-1920; Acts 1987, No. 1068, § 4.

Cross References. Religious, literary, benevolent, etc., corporations — Fees, § 4-28-102.

4-28-224. Corporation's acceptance of votes.

(a) If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a member, the corporation, if acting in good faith, is entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member.

(b) If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the name of a member, the corporation, if acting in good faith, is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member if:

(1) The member is an entity and the name signed purports to be that of an officer or agent of the entity;

(2) The name signed purports to be that of an administrator, executor, guardian, or conservator representing the member and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;

(3) The name signed purports to be that of an attorney-in-fact of the member and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the member has been presented with respect to the vote, consent, waiver, or proxy appointment; or

(4) Two (2) or more persons are the member as cotenants or fiduciaries and the name signed purports to be the name of at least one (1) of the co-owners and the person signing appears to be acting on behalf of all the co-owners.

(c) The corporation is entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the member.

(d) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section are not liable in damages to the member for the consequences of the acceptance or rejection.

(e) Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

History. Acts 1989, No. 672, § 2.

SUBCHAPTER 3 — MERGER OR CONSOLIDATION OF NONPROFIT CORPORATIONS

SECTION.	SECTION.
4-28-301. Definition.	4-28-306. Domestic corporations — Certificate of merger or consolidation — Merger or consolidation effected upon issuance.
4-28-302. Domestic corporations — Merger pursuant to plan.	4-28-307. Domestic corporations — Effect of merger or consolidation.
4-28-303. Domestic corporations — Consolidation pursuant to plan.	4-28-308. Merger or consolidation of foreign with domestic corporations.
4-28-304. Domestic corporations — Adoption of plan of merger or consolidation — Abandonment.	4-28-309. Continuation of prior corporate existence for limited purpose.
4-28-305. Domestic corporations — Articles of merger or consolidation.	

A.C.R.C. Notes. Acts 1989 (3rd Ex. Sess.), No. 57, § 1, provided: “Any non-profit corporation organized prior to March 7, 1963, which wishes to exist and function under the provisions of Arkansas Code 4-28-201 through 4-28-409, and laws amendatory or supplemental thereto shall

on or before July 1, 1990, file with the Secretary of State a copy of the court order or action whereby it was granted corporate status and shall pay to the Secretary of State a filing fee of fifty dollars (\$50.00).”

RESEARCH REFERENCES

UALR L.J. Mathews, Corporate Statutes—Which One Applies?, 13 UALR L.J. 90.

4-28-301. Definition.

As used in this subchapter, the terms “corporation”, “foreign corporation”, “not-for-profit corporation”, and “board of directors” shall have the same meaning as stated in the definition of those terms in § 4-28-202.

History. Acts 1983, No. 614, § 9; A.S.A. 1947, § 64-1933.

4-28-302. Domestic corporations — Merger pursuant to plan.

- (a) Any two (2) or more domestic corporations may merge into one (1) of such corporations pursuant to a plan of merger approved in the manner provided in this subchapter.
- (b) Each corporation shall adopt a plan of merger setting forth:

(1) The name of the corporations proposing to merge;

- (2) The name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation;
- (3) The terms and conditions of the proposed merger;
- (4) A statement of any changes in the articles of incorporation of the surviving corporation to be affected by the merger; and
- (5) Any other provisions with respect to the proposed merger as are deemed necessary or desirable.

History. Acts 1983, No. 614, § 1;
A.S.A. 1947, § 64-1925.

4-28-303. Domestic corporations — Consolidation pursuant to plan.

- (a) Any two (2) or more domestic corporations may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in this subchapter.
- (b) Each corporation shall adopt a plan of consolidation setting forth:
 - (1) The names of the corporations proposing to consolidate;
 - (2) The name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation;
 - (3) The terms and conditions of the proposed consolidation;
 - (4) With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under the Arkansas Nonprofit Corporation Act, § 4-28-201 et seq.; and
 - (5) Any other provisions with respect to the proposed consolidation as are deemed necessary or desirable.

History. Acts 1983, No. 614, § 2;
A.S.A. 1947, § 64-1926.

4-28-304. Domestic corporations — Adoption of plan of merger or consolidation — Abandonment.

- (a) A plan of merger or consolidation of domestic corporations shall be adopted in the following manner:
 - (1)(A) Where the members of any merging or consolidating corporation have voting rights, the board of directors of the corporations shall adopt a resolution approving the proposed plan and directing that it be submitted to a vote at the meeting of members having voting rights, which may be either an annual or a special meeting.
 - (B) Written or printed notice setting forth the proposed plan or a summary thereof shall be given within a reasonable time before the meeting to each member entitled to a vote at the meeting.
 - (C) The proposed plan shall be adopted upon receiving at least two-thirds ($\frac{2}{3}$) of the votes which members present at the meeting in person or by proxy are entitled to cast, unless any class of members is entitled to vote as a class thereon by the terms of the articles of incorporation or of the bylaws, in which event as to such corporations

the proposed plan shall not be adopted unless it also receives at least two-thirds ($\frac{2}{3}$) of the votes which members of each such class who are present at the meeting in person or by proxy are entitled to cast; and

(2) Where any merging or consolidating corporation has no members or no members having voting rights, a plan of merger or consolidation shall be adopted at a meeting of the board of directors of that corporation upon receiving the vote of a majority of the directors in office.

(b) After approval, and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation.

History. Acts 1983, No. 614, § 3;
A.S.A. 1947, § 64-1927.

4-28-305. Domestic corporations — Articles of merger or consolidation.

(a) Upon approval, articles of merger or articles of consolidation shall be executed by each corporation by its president or a vice president and by its secretary or an assistant secretary and verified by one (1) of the officers of each corporation signing the articles.

(b) The articles of merger or consolidation shall set forth:

(1) The plan of merger or the plan of consolidation;

(2) Where the members of any merging or consolidating corporation have voting rights, then as to each corporation:

(A) A statement setting forth the date of the meeting of members at which the plan was adopted, that a quorum was present at the meeting, and that the plan received at least two-thirds ($\frac{2}{3}$) of the votes which members present at the meeting in person or by proxy were entitled to cast, as well as, in the case of any class entitled to vote as a class thereon by the terms of the articles of incorporation or of the bylaws, at least two-thirds ($\frac{2}{3}$) of the votes which members of any such class who were present at the meeting in person or by proxy were entitled to cast; or

(B) A statement that the amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto; and

(3) Where any merging or consolidating corporation has no members or no members having voting rights, then as to each corporation a statement of that fact, the date of the meeting of the board of directors at which the plan was adopted, and a statement of the fact that the plan received the vote of a majority of the directors in office.

(c) The original and a copy of the articles of merger or articles of consolidation shall be delivered to the Secretary of State.

(d) If the Secretary of State finds that the articles conform to law, he or she shall, when all fees have been paid, including a fee of ten dollars (\$10.00) for filing articles of merger or consolidation and issuing a certificate therefor:

- (1) Endorse on the original and the copy the word "Filed" and the month, day, and year of the filing thereof;
- (2) File the original in his or her office; and
- (3) Issue a certificate of merger or a certificate of consolidation to which he or she shall affix the copy.

History. Acts 1983, No. 614, § 4;
A.S.A. 1947, § 64-1928.

4-28-306. Domestic corporations — Certificate of merger or consolidation — Merger or consolidation effected upon issuance.

(a) Upon the issuance of the certificate of merger or the certificate of consolidation by the Secretary of State, the merger or consolidation of domestic corporations shall be effected.

(b) The certificate of merger or certificate of consolidation, together with the copy of the articles of merger or articles of consolidation affixed thereto by the Secretary of State, shall be returned to the surviving or new corporation, as the case may be, or its representative.

History. Acts 1983, No. 614, §§ 4, 5;
A.S.A. 1947, §§ 64-1928, 64-1929.

4-28-307. Domestic corporations — Effect of merger or consolidation.

When the merger or consolidation of domestic corporations has been effected:

(1) The several corporations parties to the plan of merger or consolidation shall be a single corporation, which in the case of a merger shall be that corporation designated in the plan of merger as the surviving corporation and, in the case of consolidation, shall be the new corporation provided for in the plan of consolidation;

(2) Subject to § 4-28-308, the separate existence of all corporations party to the plan of merger or consolidation, except the surviving or new corporation, shall cease;

(3) The surviving or new corporation shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a corporation organized under the Arkansas Nonprofit Corporation Act, § 4-28-201 et seq.;

(4) The surviving or new corporation shall possess all the rights, privileges, immunities, and franchises, of a public as well as of a private nature, of each of the merging or consolidating corporations;

(5) All real, personal, and mixed property, all debts due on whatever account, all other choses in action, and all and every other interest of or belonging to or due to each of the corporations so merged or consolidated shall be taken and deemed to be transferred to and vested in the single corporation without further act or deed;

(6) The surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corpora-

tions so merged or consolidated, and any claim existing or action or proceeding pending by or against any of the corporations may be prosecuted as if the merger or consolidation had not taken place or the surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporations shall be impaired by merger or consolidation; and

(7) In the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the plan of merger, and, in the case of a consolidation, the statements set forth in the articles of consolidation and which are required or are permitted to be set forth in the articles of incorporation of corporations organized under the Arkansas Nonprofit Corporation Act, § 4-28-201 et seq., shall be deemed to be the articles of incorporation of the new corporation.

History. Acts 1983, No. 614, § 6;
A.S.A. 1947, § 64-1930.

4-28-308. Merger or consolidation of foreign with domestic corporations.

(a) One (1) or more foreign corporations and one (1) or more domestic corporations may be merged or consolidated if the merger or consolidation is permitted by the laws of the state under which each such foreign corporation is organized.

(b)(1) In the case of merger, the surviving corporation may be any one (1) of the constituent corporations and shall be deemed to continue to exist under the laws of the state of its incorporation.

(2) In the case of consolidation, the new corporation may be a corporation organized under the laws of any state under which any of the constituent corporations was organized.

(c) The merger or consolidation shall be carried out in the following manner:

(1)(A) Each domestic corporation shall comply with the provisions of this subchapter with respect to merger or consolidation, as the case may be, of domestic corporations, except that if the surviving or new corporation is to be a foreign corporation, the plan of merger or consolidation shall specify the state under the laws of which the surviving or new corporation is to be governed and the post office address of the registered or principal office of the surviving or new corporation in the state under the laws of which it is to be governed.

(B) However, no domestic corporation shall be merged or consolidated with a foreign corporation unless and until a resolution authorizing the merger or consolidation shall receive, at a meeting of members of the domestic corporation called and conducted in the same manner as provided by § 4-28-304, at least two-thirds ($\frac{2}{3}$) of the votes which members present at the meeting in person or by proxy are entitled to cast, and if any class of members is entitled to vote as a class thereon by the terms of the articles of incorporation or

of the bylaws, as to the corporation the resolution shall not be adopted unless it shall also receive at least two-thirds ($\frac{2}{3}$) of the votes which members of each such class who are present at the meeting in person or by proxy are entitled to cast. If a domestic corporation has no members or no members having voting rights, the plan of merger or consolidation shall be adopted at a meeting of the board of directors of the corporation upon receiving the vote of a majority of the directors in office;

(2) Each foreign corporation, if it is to transact business in this state, shall file with the Secretary of State of this state within thirty (30) days after the merger or consolidation, as the case may be, shall become effective, a copy of the plan, articles, or other document filed in the state of its incorporation for the purpose of effecting the merger or consolidation, certified by the public officer having custody of the original;

(3) If the surviving or new corporation, as the case may be, is a foreign corporation, it shall comply with the provisions of the Arkansas Nonprofit Corporation Act, § 4-28-201 et seq., with respect to foreign corporations if it is to transact business in this state, and in every case it shall file with the Secretary of State of this state:

(A) An agreement that it may be served with process in this state in any proceeding for the enforcement of any obligation of any domestic corporation which was a party to the merger or consolidation;

(B) An irrevocable appointment of the Secretary of State of this state as its agent to accept service of process in any such proceeding; and

(4) Upon compliance by each domestic and foreign corporation which is a party to the merger or consolidation with the provisions of this subchapter with respect to merger or consolidation, and upon issuance by the Secretary of State of this state of the certificate of merger or the certificate of consolidation provided for in this subchapter, the merger or consolidation shall be effected in this state.

(d) The effect of the merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations if the surviving or new corporation is a domestic corporation. If the surviving or new corporation is a foreign corporation, the effect of the merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except insofar as the laws of such other states provide otherwise.

History. Acts 1983, No. 614, § 7;
A.S.A. 1947, § 64-1931.

4-28-309. Continuation of prior corporate existence for limited purpose.

(a) The corporate existence of each constituent corporation which has been dissolved through merger or consolidation shall be continued indefinitely for the limited purpose of enabling the constituent corpo-

ration to execute through its own officers formal deeds, conveyances, assignments, and other instruments evidencing the transfer from the constituent to the surviving corporation, or new corporation created by consolidation, of any or all real and personal properties which have passed from the constituent to the surviving or consolidated corporation by operation of law.

(b) The execution of the instruments shall not be essential to effect the transfer of title from the constituent to the surviving or consolidated corporation, inasmuch as the transfer will take effect through operation of law, but the power to execute such instruments is given to the end that it may be exercised:

(1) In respect to properties located in foreign jurisdictions which may not recognize a transmittal of title by operation of law under the merger and consolidation statutes of this state; and

(2) In any other situation where the directors of the surviving or consolidated corporation consider the execution of the instruments desirable.

History. Acts 1983, No. 614, § 8; A.S.A. 1947, § 64-1932.

SUBCHAPTER 4 — SOLICITATION OF CHARITABLE CONTRIBUTIONS

SECTION.	SECTION.
4-28-401. Definitions.	tices — Records — Deposit of funds.
4-28-402. Registration of charitable organizations prior to solicitation.	4-28-408. Commercial coventurers — Filing of contracts — Terms — Accounting — Disclosures required in advertising.
4-28-403. Annual financial reports and fiscal records.	4-28-409. Disclosures.
4-28-404. Charitable organizations exempted from registration and financial disclosure requirements.	4-28-410. Documents.
4-28-405. Charitable organization — Filing of contracts.	4-28-411. Professional telemarketers — Registration and renewal.
4-28-406. Fund-raising counsel — Registration — Fees.	4-28-412. Prohibited acts.
4-28-407. Paid solicitors — Registration, fees, and bond — Filing of contracts — Solicitation notice — Contract requirements — Prohibited prac-	4-28-413. Nonresident organization — Service of process.
	4-28-414. City ordinances provisionally authorized.
	4-28-415. Disposition of fees.
	4-28-416. Violation of the Deceptive Trade Practices Act.

Publisher’s Notes. Former subchapter 4, concerning solicitation of contributions, was repealed by Acts 1999, No. 1198, § 17. The sections were derived from the following sources:

4-28-401. Acts 1959, No. 251, § 1; A.S.A. 1947, § 64-1601; Acts 1991, No. 841, § 1; 1991, No. 1177, § 2.

4-28-402. Acts 1959, No. 251, § 5; A.S.A. 1947, § 64-1605; Acts 1991, No. 841, § 2; 1991, No. 1177, § 2.

4-28-403. Acts 1959, No. 251, § 5;

- A.S.A. 1947, § 64-1605; Acts 1991, No. 841, § 3; 1991, No. 1177, § 2.
- 4-28-404. Acts 1959, No. 251, § 2; A.S.A. 1947, § 64-1602; Acts 1991, No. 841, § 4; 1991, No. 1177, § 2.
- 4-28-405. Acts 1959, No. 251, § 7; A.S.A. 1947, § 64-1607; Acts 1991, No. 841, § 5; 1991, No. 1177, § 2.
- 4-28-406. Acts 1959, No. 251, § 3; A.S.A. 1947, § 64-1603; Acts 1991, No. 841, § 6; 1991, No. 1177, § 2; 1997, No. 708, § 1.
- 4-28-407. Acts 1959, No. 251, § 4; A.S.A. 1947, § 64-1604; Acts 1991, No. 841, § 7; 1991, No. 1177, § 2.
- 4-28-408. Acts 1959, No. 251, § 4; A.S.A. 1947, § 64-1604; Acts 1991, No. 1177, § 2.
- 4-28-409. Acts 1959, No. 251, § 6; A.S.A. 1947, § 64-1606; Acts 1991, No. 841, § 8; 1991, No. 1177, § 2.
- 4-28-410. Acts 1969, No. 240, § 1; A.S.A. 1947, § 64-1616; Acts 1991, No. 841, § 9; 1991, No. 1177, § 2.

4-28-401. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Charitable organization" means any person:

(A) Who is or holds himself or herself out to be established for:

(i) Any benevolent, educational, philanthropic, humane, scientific, patriotic, social welfare or advocacy, public health, environmental conservation, civic, or other eleemosynary purpose; or

(ii) The benefit of law enforcement personnel, fire fighters, or other persons who protect the public safety; or

(B) Who in any manner employs a charitable appeal as the basis of any solicitation or an appeal which has a tendency to suggest there is a charitable purpose to any solicitation;

(2) "Charitable purpose" means any benevolent, educational, philanthropic, humane, scientific, patriotic, social welfare or advocacy, public health, environmental conservation, civic, or eleemosynary objective;

(3) "Charitable sales promotion" means an advertising or sales campaign conducted by a commercial coventurer which represents that the purchase or use of goods or services offered by the commercial coventurer will benefit a charitable organization or purpose;

(4) "Commercial coventurer" means any person who for profit or other consideration is regularly and primarily engaged in trade or commerce other than in connection with the raising of funds or any other thing of value for a charitable organization and who advertises that the purchase or use of his or her goods, services, entertainment, or any other thing of value normally sold without a charitable appeal will benefit a charitable organization during a charitable sales promotion;

(5) "Contribution" means the grant, promise, or pledge of money, credit, property, financial assistance, or other thing of value in response to a solicitation;

(6)(A) "Fund-raising counsel" means any person who for a flat fixed fee or fixed hourly rate under a written agreement plans, conducts, manages, carries on, advises, or acts as a consultant, whether directly or indirectly, in connection with soliciting contributions for or on behalf of any charitable organization, but who actually solicits no contributions as a part of the services.

(B) Fund-raising counsel do not receive or control funds or assets solicited for charitable purposes, nor do they procure or employ any compensated person to do so.

(C) No lawyer, investment counselor, or banker who advises a person to make a contribution shall be deemed, as a result of that advice, to be a fund-raising counsel.

(D) A bona fide salaried officer or employee of a registered or exempt charitable organization shall not be deemed to be a fund-raising counsel;

(7) "Gross revenue" means income of any kind from all sources, including all amounts received as the result of any solicitation by a paid solicitor;

(8)(A) "Membership" means those persons to whom, for payment of fees, dues, assessments, etc., an organization provides services and confers a bona fide right, privilege, professional standing, honor, or other direct benefit in addition to the right to vote, elect officers, or hold offices.

(B) The term "membership" shall not include those persons who are granted a membership upon making a contribution as the result of solicitation;

(9)(A) "Paid solicitor" means a person who:

(i) For compensation, other than any nonmonetary gift of nominal value awarded to a volunteer solicitor as an incentive or token of appreciation, performs for a charitable organization any service in connection with which contributions are solicited by the person or by any other person he or she employs, procures, or engages to solicit for compensation; or

(ii) At any time has custody or control of contributions.

(B) No lawyer, investment counselor, or banker who advises a person to make a contribution shall be deemed, as a result of that advice, to be a paid solicitor.

(C) A bona fide nontemporary salaried officer or employee of a charitable organization shall not be deemed a paid solicitor;

(10) "Parent organization" means that part of a charitable organization which supervises and exercises control over the solicitation and expenditure activities of one (1) or more chapters, branches, or affiliates;

(11) "Person" means:

(A) An individual;

(B) A corporation;

(C) A limited liability corporation;

(D) An association;

(E) A partnership;

(F) A foundation; or

(G) Any other entity, however styled;

(12) "Professional telemarketer" means any person who is employed or retained for compensation by a paid solicitor to solicit contributions in this state for charitable purposes; and

(13)(A) "Solicitation" means each request, either directly or indirectly, for a contribution on the plea or representation that the contribution will be used for a charitable purpose.

(B) "Solicitation" shall be deemed to occur when the request is made, at the place the request is received, whether or not the person making the request actually receives any contribution and includes, without limitation, the following methods of requesting a contribution:

(i) Any oral or written request;

(ii) Any announcement concerning an appeal or campaign to which the public is requested to make a contribution for any charitable purpose connected therewith:

(a) To the press;

(b) Over radio or television; or

(c) By telephone or telegraph;

(iii) The distribution, circulation, posting, or publishing of any handbill, written advertisement, or other publication which directly or by implication seeks to obtain public support; or

(iv) The sale of, offer of, or attempt to sell any advertisement, advertising space, subscription, ticket, or any service or tangible item:

(a) In connection with which any appeal is made for any charitable purpose or where the name of any charitable organization is used or referred to in the appeal as an inducement or reason for making the sale; or

(b) When or where, in connection with any sale, any statement is made that the whole or any part of the proceeds from the sale will be donated to any charitable purpose.

History. Acts 1999, No. 1198, § 1.

4-28-402. Registration of charitable organizations prior to solicitation.

(a)(1) No charitable organization, in or out of the state, shall solicit contributions from persons in this state by any means whatsoever until the charitable organization has:

(A) Registered;

(B) Provided certain information concerning the solicitation, as required by this subchapter, on forms to be provided by the Attorney General, and has filed the information with the Attorney General.

(2) The information so filed shall be available to the general public as a matter of public record, except and to the extent such records would otherwise be exempt from disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq.

(b) The forms containing the information shall be sworn to and shall include, but not be limited to:

(1) The identity of the charitable organization by or for whom the solicitation is to be conducted;

- (2) The address of the charitable organization;
 - (3) The purpose for which the contributions solicited are to be used;
 - (4) The individual or officer who will have custody of the contributions;
 - (5) The individuals responsible for the distribution of the contributions;
 - (6) The period of time during which the promotion is to be conducted;
 - (7) A description of the method or methods of solicitation, in such detail as may from time to time be determined by the Attorney General;
 - (8) Whether the promotion is to be conducted by voluntary unpaid solicitors, by paid solicitors, or both;
 - (9) If in whole or in part by paid solicitors:
 - (A) The name and address of each paid solicitor;
 - (B) The basis of payment;
 - (C) The nature of the arrangement; and
 - (D) A copy of the contract for services; and
 - (10) A copy of the appropriate Internal Revenue Service tax-exempt status form.
- (c) A chapter, branch, or affiliate in this state of a registered parent organization shall not be required to register provided the parent organization files a consolidated financial report or tax information form for itself and the chapter, branch, or affiliate.

History. Acts 1999, No. 1198, § 2.

CASE NOTES

ANALYSIS

Failure to register.
Requirement to register.

State as a professional fund raiser. *Jim Halsey Co. v. Bonar*, 284 Ark. 461, 683 S.W.2d 898 (1985).

Failure to Register.

Refusal to grant defendant's motion for a directed verdict was proper in a suit by a charity concert promoter against a booking agent where the plaintiff promoter failed to register with the Secretary of

Requirement to Register.

A concert promoter was not a "professional fund raiser" and was thus not required to register with the Secretary of State. *Jim Halsey Co. v. Bonar*, 284 Ark. 461, 683 S.W.2d 898 (1985).

4-28-403. Annual financial reports and fiscal records.

(a)(1) On or before May 15 of each year, each charitable organization subject to the provisions of this subchapter shall file with the Attorney General a copy of all tax or information returns, including all schedules and amendments, submitted by the charitable organization to the Internal Revenue Service for the previous reporting year, except any schedules of contributors to the organization.

(2) A charitable organization which maintains its books on other than a calendar-year basis, upon application to the Attorney General, may be permitted to file the tax or information returns referred to in this subsection within six (6) months after the close of its fiscal year.

(b)(1) A charitable organization with gross revenue in excess of five hundred thousand dollars (\$500,000) in any fiscal year it is registered shall include with its submission of the tax records referred to in subsection (a) of this section an audit report of a certified public accountant.

(2) For purposes of this section, "gross revenue" shall not include grants or fees from government agencies.

(c) Charities that are required to register with the Attorney General but are not required to file an information or tax return with the Internal Revenue Service should submit in lieu of the information or tax return an annual report in forms to be provided by the Attorney General.

(d) The Attorney General, upon written request and for good cause shown, may grant an extension of time not to exceed six (6) months for the filing of the tax records and other reports required by this section.

(e)(1) Every charitable organization subject to the provisions of this subchapter shall keep a full and true record in such form as will enable the charitable organization accurately to provide the information required by this subchapter.

(2) All the records shall be open to inspection and copying at all times by the Attorney General.

(3) The charitable organization shall retain records for no less than three (3) years after the end of the fiscal year to which they relate.

(4)(A) Any donor lists obtained pursuant to this subsection shall not be subject to disclosure pursuant to the Freedom of Information Act of 1967, § 25-19-101 et seq., without a court order authorizing the disclosure.

(B) However, donor lists and other records obtained pursuant to this subsection may be disclosed to other law enforcement agencies.

History. Acts 1999, No. 1198, § 3.

4-28-404. Charitable organizations exempted from registration and financial disclosure requirements.

The following charitable organizations shall not be subject to the filing or reporting requirement provisions of §§ 4-28-402, 4-28-403, and 4-28-405, provided each such organization shall submit any information as the Attorney General may require to substantiate an exemption under this section:

(1) Religious organizations, i.e., any bona fide, duly constituted religious entity if the entity satisfies each of the following criteria:

(A) The entity is exempt from taxation pursuant to the Internal Revenue Code; and

(B) No part of the entity's net income inures to the direct benefit of any individual;

(2) Educational institutions, i.e., any parent-teacher association or educational institution, the curricula of which in whole or in part are

registered or approved by any state or the United States either directly or by acceptance of accreditation by an accrediting body;

(3) Political candidates and organizations, i.e., any candidate for national, state, or local elective office or a political party or other committee required to file information with the Federal Election Commission or any state election commission or its equivalent agency;

(4) Governmental organizations, i.e., any department branch or other instrumentality of the federal, state, or local governments;

(5) Nonprofit hospitals, i.e., any nonprofit hospital licensed by this state or in any other state;

(6) Any charitable organization which does not intend to solicit and receive, and does not actually receive, contributions in excess of twenty-five thousand dollars (\$25,000) during a calendar year:

(A) If all of its functions, including its fund-raising functions, are carried on by persons who are unpaid for their services; and

(B) Provided that no part of its assets or income inures to the benefit of or is paid to any officer or member; and

(7) Any person who solicits solely for the benefit of organizations described in subdivisions (1)-(6) of this section.

History. Acts 1999, No. 1198, § 4. referred to in this section is codified as 26
U.S. Code. The Internal Revenue Code U.S.C.S. § 1 et seq.

4-28-405. Charitable organization — Filing of contracts.

(a) Each contract between a charitable organization and a fund-raising counsel shall be in writing and shall be filed by the charitable organization with the Attorney General prior to the performance by the fund-raising counsel of any material services pursuant to the contract.

(b) The contract shall contain such information as will enable the Attorney General to identify the services the fund-raising counsel is to provide and the manner of his or her compensation.

History. Acts 1999, No. 1198, § 5.

4-28-406. Fund-raising counsel — Registration — Fees.

(a) No person shall act as a fund-raising counsel until he or she has first registered with the Attorney General.

(b) Applications for registration shall be in writing, under oath, in the form prescribed by the Attorney General, and shall be accompanied by an annual fee in the sum of one hundred dollars (\$100).

(c) Registrations are for a period of one (1) year and may be renewed upon the filing of a new application and the tendering of the fee previously prescribed for registration.

History. Acts 1999, No. 1198, § 6.

4-28-407. Paid solicitors — Registration, fees, and bond — Filing of contracts — Solicitation notice — Contract requirements — Prohibited practices — Records — Deposit of funds.

(a)(1) No person shall act as a paid solicitor unless he or she has first registered with the Attorney General.

(2) Applications for registration shall be in writing, in the form prescribed by the Attorney General, and shall be accompanied by a fee in the amount of two hundred dollars (\$200) at the time of registration.

(3) Each registration shall be valid for one (1) year and may be renewed for additional one-year periods.

(b)(1) An applicant for registration as a paid solicitor at the time of making the application shall file with and have approved by the Attorney General a bond in which the applicant shall be the principal obligor in the sum of ten thousand dollars (\$10,000), with one (1) or more responsible sureties whose liability in the aggregate as the sureties shall be no less than that sum.

(2)(A) The bond shall run to the Attorney General for the use of the state and to any person, including a charitable organization, who may have a cause of action against the paid solicitor for any liabilities resulting from the paid solicitor's conduct of any activities in violation of this subchapter or arising out of a violation of this subchapter or any regulation adopted pursuant to this subchapter, including any actions arising under this subchapter which give rise to a violation of the Deceptive Trade Practices Act, § 4-88-101 et seq.

(B) However, the aggregate liability of the surety to the state and to all other persons, including charitable organizations, shall in no event exceed the sum of the bond.

(c) No less than fifteen (15) days prior to the commencement of each solicitation campaign, a paid solicitor shall file with the Attorney General a copy of the contract described in subsection (d) of this section.

(d) A contract between a paid solicitor and a charitable organization shall:

(1) Be in writing;

(2) Clearly state the respective obligations of the paid solicitor and the charitable organization, including the compensation or remuneration to be paid by the charitable organization to the paid solicitor; and

(3) Require delivery of the names and addresses of all persons making contributions and the amounts thereof to the charitable organization.

(e)(1) A paid solicitor shall not represent that any part of the contributions received will be given or donated to any charitable organization unless the organization has consented in writing to the use of its name prior to the solicitation.

(2) The written consent shall be signed by an authorized officer, director, or trustee of the charitable organization.

(f)(1) No paid solicitor shall represent that tickets to an event are to be donated for use by another unless the paid solicitor has first obtained

a commitment in writing from a charitable organization stating that it will accept donated tickets and specifying the number of tickets which it is to accept and provided no more contributions for donated tickets shall be solicited than the number of ticket commitments received from the charitable organization.

(2) A charitable organization shall not commit to accept more donated tickets than it can reasonably expect to use.

(3) Donated tickets will be used in accordance with the representations made to the consumer at the time of solicitation.

(g) A paid solicitor shall require any person he or she employs, procures, or engages to solicit to comply with the provisions of subsections (e) and (f) of this section.

(h)(1) A paid solicitor shall file a financial report for a campaign with the Attorney General no more than ninety (90) days after a solicitation campaign has been completed and on the anniversary of the commencement of any solicitation campaign which lasts more than one (1) year.

(2) The financial report shall include gross revenue and an itemization of all expenditures incurred and the amount of money ultimately remitted to the charity absent payment of any fees or costs to the paid solicitor.

(3) The report shall be completed on a form prescribed by the Attorney General.

(4) An authorized official of the paid solicitor and two (2) authorized officials of the charitable organization shall sign the report and they shall certify, under oath, that the report is true and complete to the best of their knowledge.

(i) A paid solicitor shall maintain during each solicitation campaign and for not less than three (3) years after the completion of each campaign the following records, which shall be available to the Attorney General for inspection upon request:

(1) The name and residence of each employee, agent, or other person involved in the solicitation;

(2) Records of all income received and expenses incurred in the course of the solicitation campaign; and

(3) The names and addresses of all persons making contributions and the amounts thereof.

(j) If a paid solicitor sells tickets to an event and represents that tickets will be donated for use by another, the paid solicitor shall maintain for not less than three (3) years after the completion of the event the following record, which shall be available to the Attorney General for inspection upon request: the name and address of all organizations receiving donated tickets for use by others, including the number of tickets received by each organization.

(k) Each contribution in the control or custody of the paid solicitor shall, in its entirety and within five (5) days of its receipt, be deposited, maintained, and administered in an account in a bank or other federally insured financial institution which shall be in the name of the charitable organization and over which that charitable organization shall have sole control over all withdrawals.

(l) Any material change in any information filed with the Attorney General pursuant to this section shall be reported in writing by the paid solicitor to the Attorney General not more than thirty (30) days after the change occurs.

(m) All records required under this section shall be open to inspection, examination, and copying during usual and customary business hours by the Attorney General or other authorized agencies.

History. Acts 1999, No. 1198, § 7.

4-28-408. Commercial coventurers — Filing of contracts — Terms — Accounting — Disclosures required in advertising.

(a)(1) Every charitable organization subject to the registration requirements of this subchapter which agrees to permit a charitable sales promotion to be conducted in its behalf shall obtain a written agreement from the commercial coventurer and file a copy of the agreement with the Attorney General prior to the commencement within this state of the charitable sales promotion.

(2) An authorized representative of the charitable organization and the commercial coventurer shall sign the agreement, and the terms of the agreement shall include at a minimum the following:

- (A) The goods or services to be offered to the public;
- (B) The geographic area where, and the starting and final date when, the offering is to be made;
- (C) The manner in which the name of the charitable organization is to be used, including any representation to be made to the public as to the amount or percent per unit of goods or service purchased or used that is to benefit the charitable organization;
- (D) A provision for an accounting on a per unit basis to be given by the commercial coventurer to the charitable organization and the date on which it is to be made; and
- (E) The date when and the manner in which the benefit is to be conferred on the charitable organization.

(b) A commercial coventurer shall keep the final accounting for each charitable sales promotion for three (3) years after the accounting date, and the accounting shall be available to the Attorney General upon reasonable request.

(c)(1) A commercial coventurer shall disclose in each advertisement for a charitable sales promotion the amount per unit of goods or services purchased or used that is to benefit the charitable organization or purpose.

(2) The amount may be expressed as a dollar amount or as a percentage of the value of the goods or services purchased or used.

History. Acts 1999, No. 1198, § 8.

4-28-409. Disclosures.

(a) It is an unlawful practice for any person to solicit or request contributions when any part of the proceeds is pledged to be given to a charitable organization or solicited for a charitable purpose unless:

(1) The person discloses to each party solicited and to every purchaser, prior to accepting funds, the identity of the person responsible for soliciting the funds and whether any compensation is received for those services;

(2) Whether soliciting by telephone, by mail, or by any other means, the person clearly and unambiguously discloses to each party and every purchaser, at the time or point of solicitation, his or her professional status; and

(3) Upon request by a solicited party, the person truthfully and accurately discloses the percentage of funds raised which is being paid to the solicitor, either directly or as reimbursement of costs, and what percentage will be ultimately retained by the charity.

(b)(1) The provisions of this section shall not apply to any bona fide full-time employee of a charitable organization or to any volunteer who donates or gives all of the gross proceeds from sales or all contributions to the organizations for which the funds or things of value were solicited.

(2) However, this exemption shall not apply to any person who directly or indirectly receives a commission as compensation for services in relation to fund-raising activities performed for the charitable organization.

History. Acts 1999, No. 1198, § 9.

4-28-410. Documents.

(a) All contracts, scripts, pamphlets, handouts, and other materials used by paid solicitors shall be in writing, and true and correct copies of all documents used in any promotion shall be kept on file in the offices of the paid solicitor and in the offices of the charitable organization on whose behalf the promotion is conducted for a period of three (3) years from the date the solicitation of contributions for the promotion commences.

(b) The documents shall be available for inspection, examination, and copying by the Attorney General and other authorized agencies during usual and customary business hours.

History. Acts 1999, No. 1198, § 10.

4-28-411. Professional telemarketers — Registration and renewal.

(a) Every professional telemarketer must be employed in a principal-agent relationship by a paid solicitor registered pursuant to this

subchapter and shall, within seventy-two (72) hours after accepting employment, register with the Attorney General.

(b) Application for registration shall be in writing under oath in the form prescribed by the Attorney General and shall be accompanied by a fee in the sum of ten dollars (\$10.00).

(c) When effected, the registration shall be for a period of one (1) year and may be renewed upon the payment of the fee prescribed in this section for additional one-year periods.

History. Acts 1999, No. 1198, § 11.

4-28-412. Prohibited acts.

It shall be a violation of this section for:

(1) Any person to make any misrepresentation, either express or implied, during the course of soliciting funds for a charitable organization;

(2) Any charitable organization to engage in any financial transaction which knowingly jeopardizes or interferes with the ability of the charitable organization to accomplish its charitable purpose;

(3) Any person to knowingly use or exploit the fact of registration so as to lead the public to believe that such registration constitutes an endorsement or approval by the state;

(4) Any person to knowingly misrepresent that any other person sponsors or endorses a solicitation;

(5) Any person to knowingly either use the name of a charitable organization or display any emblem, device, or printed matter belonging to or associated with a charitable organization without the express written permission of the charitable organization;

(6) Any charitable organization to knowingly use a name which is the same as or confusingly similar to the name of another charitable organization unless the latter organization shall consent in writing to its use;

(7) Any charitable organization to represent itself as being associated with another charitable organization without the express written acknowledgment and endorsement of the other charitable organization;

(8) Any person to knowingly make any false or misleading statements on any document required to be filed with the Attorney General;

(9) Any person to fail to substantially comply with the requirements of this subchapter;

(10) Any charitable organization to use the services of an unregistered paid solicitor who is required to register pursuant to this subchapter; and

(11) Any paid solicitor to solicit contributions from citizens or entities located in this state on behalf of an unregistered charitable organization.

History. Acts 1999, No. 1198, § 12.

4-28-413. Nonresident organization — Service of process.

(a) A nonresident charitable organization, paid solicitor, fund-raising counsel, or professional telemarketer desiring to solicit funds within the State of Arkansas shall file with the Attorney General an irrevocable written consent that in suits, proceedings, and actions growing out of the violation of any provision of this subchapter, or as a result of any activities conducted within this state giving rise to a cause of action, service on the Attorney General shall be as valid and binding as if due service had been made on the charitable organization, paid solicitor, fund-raising counsel, or professional telemarketer.

(b)(1) In case any process or pleadings are served upon the Attorney General, they shall be in duplicate, one (1) copy of which shall be filed in the office of the Attorney General, and the other immediately forwarded by the Attorney General by registered or certified mail to the principal office or place of business of the nonresident charitable organization, paid solicitor, fund-raising counsel, or professional telemarketer.

(2) Any service so had on the Attorney General shall be returnable in not less than thirty (30) days.

History. Acts 1999, No. 1198, § 13.

4-28-414. City ordinances provisionally authorized.

Nothing contained in the provisions of this subchapter shall prohibit any city or incorporated town in the State of Arkansas from enacting otherwise lawful ordinances regulating a solicitation of contributions within the limits of the city.

History. Acts 1999, No. 1198, § 14.

4-28-415. Disposition of fees.

All fees collected by the Attorney General under this subchapter shall be deposited in the State Treasury, and the Treasurer of State shall credit them as general revenues to the various funds in the respective amounts to each and to be used for the purposes as provided in the Revenue Stabilization Law, § 19-5-101 et seq.

History. Acts 1999, No. 1198, § 15.

4-28-416. Violation of the Deceptive Trade Practices Act.

(a)(1) A violation of the provisions of this section shall constitute an unfair and deceptive act or practice, as defined by the Deceptive Trade Practices Act, § 4-88-101 et seq.

(2) All remedies, penalties, and authority granted to the Attorney General or other persons under the Deceptive Trade Practices Act, § 4-88-101 et seq., shall be available to the Attorney General or other persons for the enforcement of this subchapter.

(b) Nothing in this section limits the rights or remedies which are otherwise available to a consumer under any other law.

(c) The obligations under this section are cumulative and should in no way be deemed to limit the obligations imposed under any other law.

History. Acts 1999, No. 1198, § 16.

SUBCHAPTER 5 — UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT

SECTION.

- 4-28-501. Definitions.
- 4-28-502. Supplementary general principles of law and equity.
- 4-28-503. Territorial application.
- 4-28-504. Real and personal property — Nonprofit association as legatee, devisee, or beneficiary.
- 4-28-505. Statement of authority as to real property.
- 4-28-506. Liability in tort and contract.
- 4-28-507. Capacity to assert and defend — Standing.
- 4-28-508. Effect of judgment or order.
- 4-28-509. Disposition of personal prop-

SECTION.

- erty of inactive nonprofit association.
- 4-28-510. Appointment of agent to receive service of process.
- 4-28-511. Claim not abated by change.
- 4-28-512. Venue.
- 4-28-513. Summons and complaint — Service on whom.
- 4-28-514. Uniformity of application and construction.
- 4-28-515. Short title.
- 4-28-516. Transition concerning real and personal property.
- 4-28-517. Savings clause.

A.C.R.C. Notes. References to “this chapter” in subchapters 1-4 may not apply

to this subchapter, which was enacted subsequently.

RESEARCH REFERENCES

Ark. L. Notes. Matthews, A Review of Arkansas Statutes Affecting Business and

Other Organizations Enacted Since 1990, 1998 Ark. L. Notes 65.

4-28-501. Definitions.

In this subchapter:

(1) “Member” means a person who, under the rules or practices of a nonprofit association, may participate in the selection of persons authorized to manage the affairs of the nonprofit association or in the development of policy of the nonprofit association.

(2) “Nonprofit association” means an unincorporated organization, other than one created by a trust, consisting of two or more members joined by mutual consent for a common, nonprofit purpose. However, joint tenancy, tenancy in common, or tenancy by the entireties does not by itself establish a nonprofit association, even if the co-owners share use of the property for a nonprofit purpose.

(3) “Person” means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmen-

tal subdivision, agency, or instrumentality, or any other legal or commercial entity.

(4) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

History. Acts 1997, No. 858, § 1.

RESEARCH REFERENCES

Ark. L. Rev. Carroll, Uniform Laws in Arkansas, 52 Ark. L. Rev. 313.

4-28-502. Supplementary general principles of law and equity.

Principles of law and equity supplement this subchapter unless displaced by a particular provision of it.

History. Acts 1997, No. 858, § 2.

4-28-503. Territorial application.

Real and personal property in this state may be acquired, held, encumbered, and transferred by a nonprofit association, whether or not the nonprofit association or a member has any other relationship to this state.

History. Acts 1997, No. 858, § 3.

4-28-504. Real and personal property — Nonprofit association as legatee, devisee, or beneficiary.

(a) A nonprofit association is a legal entity separate from its members for the purposes of acquiring, holding, encumbering, and transferring real and personal property.

(b) A nonprofit association in its name may acquire, hold, encumber, or transfer an estate or interest in real or personal property.

(c) A nonprofit association may be a beneficiary of a trust or contract, a legatee, or a devisee.

History. Acts 1997, No. 858, § 4.

4-28-505. Statement of authority as to real property.

(a) A nonprofit association may execute and record a statement of authority to transfer an estate or interest in real property in the name of the nonprofit association.

(b) An estate or interest in real property in the name of a nonprofit association may be transferred by a person so authorized in a statement of authority recorded in the office of the circuit clerk in the county in which a transfer of the property would be recorded.

(c) A statement of authority must set forth:

- (1) the name of the nonprofit association;
 - (2) the federal tax identification number, if any, of the nonprofit association;
 - (3) the address in this State, including the street address, if any, of the nonprofit association, or, if the nonprofit association does not have an address in this State, its address out of State;
 - (4) that it is an unincorporated nonprofit association; and
 - (5) the name or title of a person authorized to transfer an estate or interest in real property held in the name of the nonprofit association.
- (d) A statement of authority must be executed in the same manner as an affidavit by a person who is not the person authorized to transfer the estate or interest.
- (e) A filing officer may collect a fee for recording a statement of authority in the amount authorized for recording a transfer of real property.
- (f) An amendment, including a cancellation, of a statement of authority must meet the requirements for execution and recording of an original statement. Unless canceled earlier, a recorded statement of authority or its most recent amendment is canceled by operation of law five years after the date of the most recent recording.
- (g) If the record title to real property is in the name of a nonprofit association and the statement of authority is recorded in the office of the circuit clerk in the county in which a transfer of real property would be recorded, the authority of the person named in a statement of authority to transfer is conclusive in favor of a person who gives value without notice that the person lacks authority.

History. Acts 1997, No. 858, § 5.

4-28-506. Liability in tort and contract.

- (a) A nonprofit association is a legal entity separate from its members for the purposes of determining and enforcing rights, duties, and liabilities in contract and tort.
- (b) A person is not liable for a breach of a nonprofit association's contract merely because the person is a member, is authorized to participate in the management of the affairs of the nonprofit association, or is a person considered to be a member by the nonprofit association.
- (c) A person is not liable for a tortious act or omission for which a nonprofit association is liable merely because the person is a member, is authorized to participate in the management of the affairs of the nonprofit association, or is a person considered as a member by the nonprofit association.
- (d) A tortious act or omission of a member or other person for which a nonprofit association is liable is not imputed to a person merely because the person is a member of the nonprofit association, is authorized to participate in the management of the affairs of the

nonprofit association, or is a person considered as a member by the nonprofit association.

(e) A member of, or a person considered to be a member by, a nonprofit association may assert a claim against the nonprofit association. A nonprofit association may assert a claim against a member or a person considered to be a member by the nonprofit association.

History. Acts 1997, No. 858, § 6.

4-28-507. Capacity to assert and defend — Standing.

(a) A nonprofit association, in its name, may institute, defend, intervene, or participate in a judicial, administrative, or other governmental proceeding or in an arbitration, mediation, or any other form of alternative dispute resolution.

(b) A nonprofit association may assert a claim in its name on behalf of its members if one or more members of the nonprofit association have standing to assert a claim in their own right, the interests the nonprofit association seeks to protect are germane to its purposes, and neither the claim asserted nor the relief requested requires the participation of a member.

History. Acts 1997, No. 858, § 7.

4-28-508. Effect of judgment or order.

A judgment or order against a nonprofit association is not by itself a judgment or order against a member or a person authorized to participate in the management of the affairs of the nonprofit association.

History. Acts 1997, No. 858, § 8.

4-28-509. Disposition of personal property of inactive nonprofit association.

If a nonprofit association has been inactive for three years or longer, or a different period specified in a document of the nonprofit association, a person in possession or control of personal property of the association may transfer custody of the property:

(1) if a document of a nonprofit association specifies a person to whom transfer is to be made under these circumstances, to that person; or

(2) if no person is so specified, to a nonprofit association or nonprofit corporation pursuing broadly similar purposes, or to a government or governmental subdivision, agency, or instrumentality.

History. Acts 1997, No. 858, § 9.

4-28-510. Appointment of agent to receive service of process.

(a) A nonprofit association may file in the office of the Secretary of State a statement appointing an agent authorized to receive service of process.

(b) A statement appointing an agent must set forth:

(1) the name of the nonprofit association;

(2) the federal tax identification number, if any, of the nonprofit association;

(3) the address in this State, including the street address, if any, of the nonprofit association, or, if the nonprofit association does not have an address in this State, its address out of State; and

(4) the name of the person in this State authorized to receive service of process and the person's address, including the street address, in this State.

(c) A statement appointing an agent must be signed and acknowledged by a person authorized to manage the affairs of the nonprofit association. The statement must also be signed and acknowledged by the person appointed agent, who thereby accepts the appointment. The appointed agent may resign by filing a resignation in the office of the Secretary of State and giving notice to the nonprofit association.

(d) A filing officer may collect a fee for filing a statement appointing an agent to receive service of process, an amendment, a cancellation, or a resignation in the amount charged for filing similar documents.

(e) An amendment to or cancellation of a statement appointing an agent to receive service of process must meet the requirements for execution of an original statement.

History. Acts 1997, No. 858, § 10.

4-28-511. Claim not abated by change.

A claim against a nonprofit association does not abate merely because of a change in its members or persons authorized to manage the affairs of the nonprofit association.

History. Acts 1997, No. 858, § 11.

4-28-512. Venue.

For purposes of venue, a nonprofit association is a resident of the county in which it has an office.

History. Acts 1997, No. 858, § 12.

4-28-513. Summons and complaint — Service on whom.

In an action or proceeding against a nonprofit association a summons and complaint must be served on an agent authorized by appointment to receive service of process, an officer, managing or general agent, or a

person authorized to participate in the management of its affairs. If none of them can be served, service may be made on a member.

History. Acts 1997, No. 858, § 13.

4-28-514. Uniformity of application and construction.

This subchapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this subchapter among States enacting it.

History. Acts 1997, No. 858, § 14.

4-28-515. Short title.

This subchapter may be cited as the Uniform Unincorporated Non-profit Association Act.

History. Acts 1997, No. 858, § 15.

4-28-516. Transition concerning real and personal property.

If, before August 1, 1997, an estate or interest in real or personal property was by terms of the transfer purportedly transferred to a nonprofit association but under the law the estate or interest did not vest in the nonprofit association, on August 1, 1997 the estate or interest vests in the nonprofit association, unless the parties have treated the transfer as ineffective.

History. Acts 1997, No. 858, § 16.

4-28-517. Savings clause.

This subchapter does not affect an action or proceeding commenced or right accrued before August 1, 1997.

History. Acts 1997, No. 858, § 17.

CHAPTER 29

PROFESSIONAL CORPORATIONS

- SUBCHAPTER.
- 1. GENERAL PROVISIONS.
 - 2. ARKANSAS PROFESSIONAL CORPORATION ACT.
 - 3. MEDICAL CORPORATION ACT.
 - 4. DENTAL CORPORATION ACT.

RESEARCH REFERENCES

Ark. L. Notes. Mathews, A Review of Other Organizations Enacted Since 1990, Arkansas Statutes Affecting Business and 1998 Ark. L. Notes 65.

ALR. Professional services within meaning of statute preserving individual liability of professional employees of professional corporation, association, or partnership. 31 ALR 4th 898.

Issues pertaining to ownership affected by resignation from corporate practice by active shareholder. 32 ALR 4th 921.

Liability of professional corporation of lawyers, or individual members thereof, for malpractice or other tort of another member. 39 ALR 4th 556.

Corporate stock and stockholders, nonmalpractice liability. 50 ALR 4th 1276.

Tort liability of medical society or pro-

fessional association for failure to discipline or investigate negligent or otherwise incompetent medical practitioner. 72 ALR 4th 1148.

Ark. L. Rev. Professional Corporations — A Current Appraisal, 23 Ark. L. Rev. 215.

Some Legal and Other Problems of Professional Corporations in Arkansas, 24 Ark. L. Rev. 292.

Note, Is the Professional Association Dead after TEFRA? — The Continuing Saga of Hunter and Hunted, 36 Ark. L. Rev. 508.

CASE NOTES

Cited: *Sturgis v. Skokos*, 335 Ark. 41, 977 S.W.2d 217 (1998).

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

4-29-101. Persons associated with professional corporations —

Limitations on personal liability.

4-29-101. Persons associated with professional corporations — Limitations on personal liability.

(a) No person shall be personally liable for any obligation or liability of any shareholder, director, officer, agent, or employee of a professional corporation solely because the person is a shareholder, director, officer, agent, or employee of the professional corporation.

(b) In addition, no person shall be personally liable for any obligations or liabilities of a professional corporation solely because the person is a shareholder, director, officer, agent, or employee of the professional corporation.

History. Acts 1991, No. 1146, § 1.

SUBCHAPTER 2 — ARKANSAS PROFESSIONAL CORPORATION ACT

SECTION.

- 4-29-201. Title.
- 4-29-202. Definitions.
- 4-29-203. Subchapter optional.
- 4-29-204. Application of Arkansas Business Corporation Act.
- 4-29-205. Professional relationships unaltered.
- 4-29-206. Formation of corporation.

SECTION.

- 4-29-207. Corporate name.
- 4-29-208. Officers, directors, and shareholders.
- 4-29-209. Employees.
- 4-29-210. Certificate of registration — Issuance, renewal, etc.
- 4-29-211. Certificate of registration — Suspension or revocation.

SECTION.

4-29-212. Certificate of registration —
Appeal from denial, sus-
pension, or revocation.

SECTION.

4-29-213. Shares of deceased or disquali-
fied shareholder — Price.

Effective Dates. Acts 1963, No. 155, § 20; Mar. 5, 1963. Emergency clause provided: "It is hereby determined that it is expedient immediately to amend the corporation laws of this State, in order to provide necessary correlation between them and the practice of professions, in corporate form, so that adequate regula-

tion, safeguards, and supervision may be provided for the public peace, health, safety and welfare. An emergency is therefore declared to exist and this act being necessary therefor, the same shall be effective from and after its passage and approval."

RESEARCH REFERENCES

ALR. Statute prohibiting use of name descriptive of engineering by business organization not practicing profession of engineering. 13 ALR 4th 676.

Liability of professional corporation of lawyers, or individual members thereof,

for malpractice or other tort of another member. 39 ALR 4th 556.

UALR L.J. Mathews, Corporate Statutes—Which One Applies?, 13 UALR L.J. 82.

4-29-201. Title.

This subchapter may be cited as the "Arkansas Professional Corporation Act".

History. Acts 1963, No. 155, § 1; A.S.A. 1947, § 64-2001.

4-29-202. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Beneficial owner" means an individual who is the grantor and sole trustee of a revocable living trust wherein the individual reserves the unrestricted right to revoke the trust;

(2) "Professional service" means any type of professional service which may be legally performed only pursuant to a license or other legal personal authorization for example, the personal service rendered by certified public accountants, architects, engineers, dentists, doctors, and attorneys at law; and

(3) "Shareholder" means either:

(A) The person in whose name shares are registered in the records of a corporation; or

(B) The beneficial owner of shares of a revocable living trust where the shares are registered in the records of the corporation in the name of the revocable living trust.

History. Acts 1963, No. 155, § 2; 1970 (Ex. Sess.), No. 13, § 1; A.S.A. 1947, § 64-2002; Acts 1997, No. 306, § 1.

Publisher's Notes. Acts 1970 (Ex. Sess.), No. 13, § 7 provided that the purpose and intent of the act was to permit

the formation of a professional corporation by one or more persons under this subchapter.

Amendments. The 1997 amendment added (a) and (c) and the subsection (b) designation.

4-29-203. Subchapter optional.

(a) Nothing in this subchapter shall be construed to amend, repeal, or supersede all or any part of the Medical Corporation Act, § 4-29-301 et seq., or Dental Corporation Act, § 4-29-401 et seq., and insofar as those acts are concerned in relation to this subchapter, this subchapter shall be construed as being optional.

(b) This subchapter shall also be optional to other professional corporations now legally doing business in the State of Arkansas.

History. Acts 1963, No. 155, § 18; A.S.A. 1947, § 64-2018.

4-29-204. Application of Arkansas Business Corporation Act.

(a) The Arkansas Business Corporation Act, § 4-27-101 et seq., shall be applicable to such professional corporations, including their organization, and they shall enjoy the powers and privileges and be subject to the duties, restrictions, and liabilities of other corporations except so far as they may be limited or enlarged by this subchapter.

(b) If any provision of this subchapter conflicts with the Arkansas Business Corporation Act, § 4-27-101 et seq., this subchapter shall take precedence.

(c) If any person incorporating under the Arkansas Professional Corporation Act, § 4-29-201 et seq., the Medical Corporation Act, § 4-29-301 et seq., or the Dental Corporation Act, § 4-29-401 et seq., needs to convert to a business corporation as governed by the Arkansas Business Corporation Act, § 4-27-101 et seq., that professional association may do so by filing an amendment in accordance with § 4-27-1006, provided that the relevant licensing agency allows.

History. Acts 1963, No. 155, § 3; 1970 (Ex. Sess.), No. 13, § 2; A.S.A. 1947, § 64-2003; Acts 1999, No. 481, § 1.

Publisher's Notes. Acts 1970 (Ex. Sess.), No. 13, § 7 provided that the purpose and intent of the act was to permit the formation of a professional corpora-

tion by one or more persons under this subchapter.

Amendments. The 1999 amendment added (c) and made stylistic changes.

Cross References. Business Corporation Act of 1987, § 4-27-101 et seq.

RESEARCH REFERENCES

Ark. L. Rev. Note, Professional Corporations: Shareholder Liability and the Saving Clause, 42 Ark. L. Rev. 777.

4-29-205. Professional relationships unaltered.

This subchapter does not alter any law applicable to the relationship between a person furnishing professional service and a person receiving the service, including liability arising out of the professional service.

History. Acts 1963, No. 155, § 15; A.S.A. 1947, § 64-2015.

RESEARCH REFERENCES

Ark. L. Rev. Note, Professional Corporations: Shareholder Liability and the Saving Clause, 42 Ark. L. Rev. 777.

4-29-206. Formation of corporation.

(a) One (1) or more persons duly and properly licensed under and pursuant to the laws of the State of Arkansas to render the same type of professional services, as defined in § 4-29-202, may form a corporation, pursuant to the Arkansas Business Corporation Act of 1987, § 4-27-101 et seq., to own, operate, and maintain a professional corporation and to engage in the professional services thereby authorized, by and through its licensed shareholders, directors, officers, and employees only.

(b) It is mandatory that such professional services be rendered by or through persons who are duly and properly licensed, individually, to engage in the profession.

History. Acts 1963, No. 155, § 2; 1970 (Ex. Sess.), No. 13, § 1; A.S.A. 1947, § 64-2002; Acts 2001, No. 728, § 2.

Publisher's Notes. Acts 1970 (Ex. Sess.), No. 13, § 7 provided that the purpose and intent of the act was to permit the formation of a professional corpora-

tion by one or more persons under this subchapter.

Amendments. The 2001 amendment designated the section as (a) and (b); and in (a), inserted "of 1987" and substituted "§ 4-27-101 et seq." for "§ 4-26-101 et seq."

4-29-207. Corporate name.

(a) The corporate name shall contain either:

- (1) The names of one (1) or more of the shareholders; or
- (2) The names of one (1) or more deceased former shareholders or deceased members of a predecessor organization; or
- (3) Any combination of the names specified in subdivisions (a)(1) and (2) of this section.

(b) The name of a person who is not employed by the corporation shall not be included in the corporate name, except that the name of a deceased former shareholder or deceased member of a predecessor organization may continue to be included in the corporate name.

(c) The corporate name shall end with the word "Chartered", or "Limited", or the abbreviation "Ltd.", or the words "Professional Association", or the abbreviation "P.A."

History. Acts 1963, No. 155, § 4; 1973, No. 76, § 1; A.S.A. 1947, § 64-2004.

4-29-208. Officers, directors, and shareholders.

All of the officers, directors, and shareholders of a corporation subject to this subchapter shall be, at all times, persons licensed pursuant to the laws of this state governing their profession. No person who is not so licensed shall have any part in the ownership, management, or control of the corporation, nor may any proxy to vote any shares of the corporation be given to a person who is not so licensed.

History. Acts 1963, No. 155, § 14; A.S.A. 1947, § 64-2014.

CASE NOTES

Cited: Leonard v. Leonard, 22 Ark. App. 279, 739 S.W.2d 697 (1987).

4-29-209. Employees.

Each individual employee licensed pursuant to the laws of this state to engage in his or her profession who is employed by a corporation subject to this subchapter shall remain subject to reprimand or discipline for his or her conduct under the provisions of the laws or regulations governing or applicable to his or her profession.

History. Acts 1963, No. 155, § 16; A.S.A. 1947, § 64-2016.

4-29-210. Certificate of registration — Issuance, renewal, etc.

(a) No corporation shall open, operate, or maintain an establishment for any of the purposes set forth in §§ 4-29-202 and 4-29-206 without a certificate of registration from the state board, department, or agency, as the case may be, authorized by law to license individuals to engage in the profession concerned.

(b) Applications for registration shall be made in writing and shall contain the name and address of the corporation and such other information as may be required by the board, department, or agency.

(c)(1) Upon receipt of the application, the board, department, or agency shall make an investigation of the corporation.

(2) If it finds that the incorporators, officers, directors, and shareholders are each licensed pursuant to the laws of Arkansas to engage in the particular profession involved, and if no disciplinary action is pending before it against any of them, and if it appears that the corporation will be conducted in compliance with the law and the regulations of the board, department, or agency, it shall issue, upon payment of a registration fee of twenty-five dollars (\$25.00), a certificate of registration which shall remain effective until January 1 following the date of the registration.

(d) Upon written application of the holder, accompanied by a fee of ten dollars (\$10.00), the board, department, or agency which originally issued the certificate of registration shall annually renew the certificate of registration if it finds that the corporation has complied with its regulations and the provisions of this subchapter.

(e) The certificate of registration shall be conspicuously posted upon the premises to which it is applicable.

(f) In the event of a change of location of the registered establishment, the board, department, or agency, in accordance with its regulations, shall amend the certificate of registration so that it shall apply to the new location.

(g) No certificate of registration shall be assignable.

History. Acts 1963, No. 155, §§ 5-9;
A.S.A. 1947, §§ 64-2005 — 64-2009.

4-29-211. Certificate of registration — Suspension or revocation.

(a) The state board, department, or agency which issued the certificate of registration may suspend or revoke it for any of the following reasons:

(1) The revocation or suspension of the license to practice the profession of any officer, director, shareholder, or employee not promptly removed or discharged by the corporation;

(2) Unethical professional conduct on the part of any officer, director, shareholder, or employee not promptly removed or discharged by the corporation;

(3) The death of the last remaining shareholder; or

(4) Upon finding that the holder of a certificate has failed to comply with the provisions of this subchapter or the regulations prescribed by the state board, department, or agency that issued it.

(b) Before any certificate of registration is suspended or revoked, the holder shall be given written notice of the proposed action and the reasons therefor and shall be given a public hearing by the state board, department, or agency giving the notice, with the right to produce testimony and other evidence concerning the charges made. The notice shall also state the place and date of the hearing, which shall be at least ten (10) days after service of the notice.

History. Acts 1963, No. 155, §§ 10, 11;
A.S.A. 1947, §§ 64-2010, 64-2011.

4-29-212. Certificate of registration — Appeal from denial, suspension, or revocation.

(a) Any corporation, save and except attorneys at law, whose application for a certificate of registration has been denied or whose registration has been suspended or revoked may appeal within thirty

(30) days after notice of the action by the board, department, or agency to the Circuit Court of Pulaski County.

(b) The court shall inquire into the cause of the board, department, or agency action and may affirm or reverse the decision and order a further hearing by the board, or may order the board to grant appellant a certificate of registration.

(c) The appeal shall be in the manner provided by law.

(d) Notice of appeal shall be served upon the secretary of the board, department, or agency by serving the secretary a copy thereof within thirty (30) days after it has notified the appellant of its decision. The service may be by registered or certified mail.

History. Acts 1963, No. 155, §§ 12, 13;
A.S.A. 1947, §§ 64-2012, 64-2013.

4-29-213. Shares of deceased or disqualified shareholder — Price.

If the articles of incorporation or bylaws of a corporation subject to this subchapter fail to state a price or method of determining a fixed price at which the corporation or its shareholders may purchase the shares of a deceased shareholder or a shareholder no longer qualified to own shares in the corporation, then the price for the shares shall be the book value as of the end of the month immediately preceding the death or disqualification of the shareholder. Book value shall be determined from the books and records of the corporation in accordance with the regular method of accounting used by the corporation.

History. Acts 1963, No. 155, § 17;
A.S.A. 1947, § 64-2017.

SUBCHAPTER 3 — MEDICAL CORPORATION ACT

SECTION.

4-29-301. Title.

4-29-302. Definitions.

4-29-303. Application of Arkansas Business Corporation Act.

4-29-304. Physician-patient relationship unaltered.

4-29-305. Formation of corporation — Employee licensing required.

4-29-306. Corporate name.

4-29-307. Officers, directors, and shareholders.

SECTION.

4-29-308. Employees.

4-29-309. Certificate of registration — Issuance, renewal, etc.

4-29-310. Certificate of registration — Suspension or revocation.

4-29-311. Certificate of registration — Appeal from denial, suspension, or revocation.

4-29-312. Shares of deceased or disqualified shareholder — Price.

Cross References. As to limited liability companies that will engage in the practice of medicine, see § 4-32-1401 et seq.

Preambles. Acts 1965, No. 435, contained a preamble which read: "Whereas, Section 4 of Act No. 179 of the Acts of 1961 requires that the corporate name of a

medical corporation shall contain the names of one or more of the shareholders;

“Whereas, the law does not take into consideration the problem created when a medical corporation is composed of shareholders too numerous to include all names in the corporate name and there is inequity in preferring some shareholders over others by including some names of shareholders in the corporate name and excluding others; and

“Whereas, a medical corporation should be afforded the opportunity and convenience of organizing without the necessity of including the name of one or more of its shareholders in the corporate name;

“Now, therefore. . . .”

Effective Dates. Acts 1961, No. 179, § 19: Mar. 6, 1961. Emergency clause provided: “It is hereby determined that it is expedient immediately to amend the corporation laws of this State in order to provide necessary correlation between them and the practice of medicine, in corporate form, so that adequate regulation, safeguards, and supervision may be

provided for the public peace, health, safety and welfare. An emergency is therefore declared to exist and this Act being necessary therefor, the same shall be effective from and after its passage and approval.”

Acts 1965, No. 435, § 3: Mar. 26, 1965. Emergency clause provided: “It is hereby found and determined by the General Assembly that the provisions of Section 4 of Act 179 of 1961 which requires that the corporate name of a medical corporation contain the names of one or more of the shareholders is unduly restrictive and is a deterrent to the organization of such corporations and that this act is immediately necessary to correct this undesirable situation by making the inclusion of the name or names of shareholders in the corporate name permissive. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in effect from the date of its passage and approval.”

RESEARCH REFERENCES

ALR. Tort liability of medical society or professional association for failure to discipline or investigate negligent or otherwise incompetent medical practitioner. 72 ALR 4th 1148.

Ark. L. Rev. Medical and Dental Cor-

porations: A Step Toward Tax Equality, 15 Ark. L. Rev. 366.

UALR L.J. Mathews, Corporate Statutes—Which One Applies?, 13 UALR L.J. 79.

4-29-301. Title.

This subchapter may be cited as the “Medical Corporation Act”.

History. Acts 1961, No. 179, § 1; A.S.A. 1947, § 64-1701; Acts 1997, No. 306, § 2.

A.C.R.C. Notes. Former (b) of this section, relating to definitions, was recodified

as § 4-29-302 in 1999 by the Arkansas Code Revision Commission.

Amendments. The 1997 amendment added former subsection (b).

4-29-302. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) “Beneficial owner” means an individual who is the grantor and sole trustee of a revocable living trust wherein the individual reserves the unrestricted right to revoke the trust;

(2) “Professional service” means any type of professional service which may be legally performed only pursuant to a license or other legal personal authorization, for example: the personal service rendered by

certified public accountants, architects, engineers, dentists, doctors, and attorneys at law; and

(3) "Shareholder" means either:

(A) The person in whose name shares are registered in the records of a corporation; or

(B) The beneficial owner of shares of a revocable living trust where the shares are registered in the records of the corporation in the names of the revocable living trust.

History. Acts 1961, No. 179, § 1; § 4-29-301(b) and was redesignated as A.S.A. 1947, § 64-1701; Acts 1997, No. § 4-29-302 in 1999 by the Arkansas Code Revision Commission.

A.C.R.C. Notes. Section was formerly

4-29-303. Application of Arkansas Business Corporation Act.

(a) The Arkansas Business Corporation Act, § 4-27-101 et seq., shall be applicable to such corporations, including their organization, except that the required number of incorporators of a medical corporation shall be one (1) or more, and they shall enjoy the powers and privileges and be subject to the duties, restrictions, and liabilities of other corporations, except so far as the same may be limited or enlarged by this subchapter.

(b) If any provision of this subchapter conflicts with the Arkansas Business Corporation Act, § 4-27-101 et seq., this subchapter shall take precedence.

History. Acts 1961, No. 179, § 3; 1970, (Ex. Sess.), No. 13, § 4; A.S.A. 1947, § 64-1703; Acts 1999, No. 480, § 1.

A.C.R.C. Notes. Section was formerly § 4-29-302 and was renumbered as § 4-29-303 in 1999 by the Arkansas Code Revision Commission.

Publisher's Notes. Acts 1970 (Ex. Sess.), No. 13, § 7 provided that the pur-

pose and intent of the act was to permit the formation of a professional corporation by one or more persons under § 4-29-201 et seq.

Amendments. The 1999 amendment made stylistic changes.

Cross References. Business Corporation Act of 1987, § 4-27-101 et seq.

4-29-304. Physician-patient relationship unaltered.

This subchapter does not alter any law applicable to the relationship between a physician furnishing medical service and a person receiving the service, including liability arising out of the service.

History. Acts 1961, No. 179, § 15; § 4-29-303 and was renumbered as § 4-29-304 in 1999 by the Arkansas Code Revision Commission.

A.C.R.C. Notes. Section was formerly

4-29-305. Formation of corporation — Employee licensing required.

(a) One (1) or more persons licensed pursuant to the Arkansas Medical Practices Act, § 17-95-201 et seq., may associate to form a corporation pursuant to the Arkansas Business Corporation Act of

1987, § 4-27-101 et seq., to own, operate, and maintain an establishment for the study, diagnosis, and treatment of human ailments and injuries, whether physical or mental, and to promote medical, surgical, and scientific research and knowledge.

(b) However, medical or surgical treatment, consultation, or advice may be given by employees of the corporation only if they are licensed pursuant to the Arkansas Medical Practices Act, § 17-95-201 et seq.

History. Acts 1961, No. 179, § 2; 1970 (Ex. Sess.), No. 13, § 3; A.S.A. 1947, § 64-1702; Acts 2001, No. 728, § 3.

A.C.R.C. Notes. Section was formerly § 4-29-304 and was renumbered as § 4-29-305 in 1999 by the Arkansas Code Revision Commission.

Publisher's Notes. Acts 1970 (Ex. Sess.), No. 13, § 7 provided that the pur-

pose and intent of the act was to permit the formation of a professional corporation by one or more persons under § 4-29-201 et seq.

Amendments. The 2001 amendment inserted "of 1987" and substituted "§ 4-27-101 et seq." for "§ 4-26-101 et seq." in (a).

4-29-306. Corporate name.

(a)(1) The corporate name may contain the names of one (1) or more of the shareholders.

(2) However, the name of a person who is not employed by the corporation shall not be included in the corporate name, except that the name of a deceased shareholder may continue to be included in the corporate name for one (1) year following the decease of the shareholder.

(b) The corporate name shall end with the word "Chartered", or the word "Limited", or the abbreviation "Ltd.", or the words "Professional Association", or the abbreviation "P.A."

History. Acts 1961,*No. 179, § 4; 1965, § 4-29-305 and was renumbered as § 4-No. 435, § 1; A.S.A. 1947, § 64-1704. 29-306 in 1999 by the Arkansas Code

A.C.R.C. Notes. Section was formerly Revision Commission.

CASE NOTES

Cited: Venable v. Becker, 287 Ark. 236, 697 S.W.2d 903 (1985).

4-29-307. Officers, directors, and shareholders.

(a) All of the officers, directors, and shareholders of a corporation subject to this subchapter shall at all times be persons licensed pursuant to the Arkansas Medical Practices Act, § 17-95-201 et seq.

(b) No person who is not so licensed shall have any part in the ownership, management, or control of the corporation, nor may any proxy to vote any shares of the corporation be given to a person who is not so licensed.

History. Acts 1961, No. 179, § 14; A.S.A. 1947, § 64-1714.

A.C.R.C. Notes. Section was formerly § 4-29-306 and was renumbered as § 4-

29-307 in 1999 by the Arkansas Code Revision Commission.

4-29-308. Employees.

Each individual employee licensed pursuant to the Arkansas Medical Practices Act, § 17-95-201 et seq., who is employed by a corporation subject to this subchapter shall remain subject to reprimand or discipline for his or her conduct under the provisions of the Arkansas Medical Practices Act, § 17-95-201 et seq.

History. Acts 1961, No. 179, § 16; § 4-29-307 and was renumbered as § 4-A.S.A. 1947, § 64-1716. 29-308 in 1999 by the Arkansas Code Revision Commission.

A.C.R.C. Notes. Section was formerly

4-29-309. Certificate of registration — Issuance, renewal, etc.

(a) No corporation shall open, operate, or maintain an establishment for any of the purposes set forth in § 4-29-305 without a certificate of registration from the Arkansas State Medical Board.

(b) Application for the registration shall be made to the board in writing and shall contain the name and address of the corporation and such other information as may be required by the board.

(c)(1) Upon receipt of the application, the board shall make an investigation of the corporation.

(2) If the board finds that the incorporators, officers, directors, and shareholders are each licensed pursuant to the Arkansas Medical Practices Act, § 17-95-201 et seq., and if no disciplinary action is pending before the board against any of them, and if it appears that the corporation will be conducted in compliance with law and the regulations of the board, the board shall issue, upon payment of a registration fee of twenty-five dollars (\$25.00), a certificate of registration which shall remain effective until January 1 following the date of the registration.

(d) Upon written application of the holder, accompanied by a fee of ten dollars (\$10.00), the board shall annually renew the certificate of registration if the board finds that the corporation has complied with its regulations and the provisions of this subchapter.

(e) The certificate of registration shall be conspicuously posted upon the premises to which it is applicable.

(f) In the event of a change of location of the registered establishment, the board, in accordance with its regulations, shall amend the certificate of registration so that it shall apply to the new location.

(g) No certificate of registration shall be assignable.

History. Acts 1961, No. 179, §§ 5-9; § 4-29-308 and was renumbered as § 4-A.S.A. 1947, §§ 64-1705 — 64-1709. 29-309 in 1999 by the Arkansas Code Revision Commission.

A.C.R.C. Notes. Section was formerly

4-29-310. Certificate of registration — Suspension or revocation.

(a) The Arkansas State Medical Board may suspend or revoke any certificate of registration for any of the following reasons:

(1) The revocation or suspension of the license to practice medicine of any officer, director, shareholder, or employee not promptly removed or discharged by the corporation;

(2) Unethical professional conduct on the part of any officer, director, shareholder, or employee not promptly removed or discharged by the corporation;

(3) The death of the last remaining shareholder; or

(4) Upon finding that the holder of a certificate has failed to comply with the provisions of this subchapter or the regulations prescribed by the board.

(b)(1) Before any certificate of registration is suspended or revoked, the holder shall be given written notice of the proposed action and the reasons therefor and shall be given a public hearing by the board with the right to produce testimony concerning the charges made.

(2) The notice shall also state the place and date of the hearing which shall be at least five (5) days after service of the notice.

History. Acts 1961, No. 179, §§ 10, 11; § 4-29-309 and was renumbered as § 4-A.S.A. 1947, §§ 64-1710, 64-1711. 29-310 in 1999 by the Arkansas Code

A.C.R.C. Notes. Section was formerly Revision Commission.

4-29-311. Certificate of registration — Appeal from denial, suspension, or revocation.

(a) Any corporation whose application for a certificate of registration has been denied or whose registration has been suspended or revoked may appeal to the Circuit Court of Pulaski County within thirty (30) days after notice of the action by the Arkansas State Medical Board.

(b) The court shall inquire into the cause of the board's action and may affirm or reverse the decision and order a further hearing by the board or may order the board to grant the appellant a certificate of registration.

(c) Appeal shall be in the manner provided by law.

(d)(1) Notice of appeal shall be served upon the secretary of the board by serving the secretary a copy thereof within thirty (30) days after the board has notified the appellant of its decision.

(2) The service may be by registered or certified mail.

History. Acts 1961, No. 179, §§ 12, 13; § 4-29-310 and was renumbered as § 4-A.S.A. 1947, §§ 64-1712, 64-1713. 29-311 in 1999 by the Arkansas Code

A.C.R.C. Notes. Section was formerly Revision Commission.

4-29-312. Shares of deceased or disqualified shareholder — Price.

(a) If the articles of incorporation or bylaws of a corporation subject to this subchapter fail to state a price or method of determining a fixed price at which the corporation or its shareholders may purchase the shares of a deceased shareholder or a shareholder no longer qualified to own shares in the corporation, then the price for the shares shall be the book value as of the end of the month immediately preceding the death or disqualification of the shareholder.

(b) Book value shall be determined from the books and records of the corporation in accordance with the regular method of accounting used by the corporation.

History. Acts 1961, No. 179, § 17; § 4-29-311 and was renumbered as § 4-29-312 in 1999 by the Arkansas Code

A.C.R.C. Notes. Section was formerly § Revision Commission.

SUBCHAPTER 4 — DENTAL CORPORATION ACT

SECTION.

- 4-29-401. Title and definitions.
- 4-29-402. Application of Arkansas Business Corporation Act.
- 4-29-403. Dentist-patient relationship unaltered.
- 4-29-404. Formation of corporation — Employee licensing required.
- 4-29-405. Corporate name.
- 4-29-406. Officers, directors, and shareholders.

SECTION.

- 4-29-407. Employees.
- 4-29-408. Certificate of registration — Issuance, renewal, etc.
- 4-29-409. Certificate of registration — Suspension or revocation.
- 4-29-410. Certificate of registration — Appeal from denial, suspension, or revocation.
- 4-29-411. Shares of deceased or disqualified shareholder — Price.

Cross References. Unlawful practice, § 17-82-104.

As to limited liability companies that will engage in the practice of dentistry, see § 4-32-1401.

Effective Dates. Acts 1961, No. 471, § 19: Mar. 16, 1961. Emergency clause provided: "It is hereby determined that it is expedient immediately to amend the corporation laws of this State in order to

provide necessary correlation between them and the practice of dentistry, in corporate form, so that adequate regulation, safeguards, and supervision may be provided for the public peace, health, safety and welfare. An emergency is therefore declared to exist and this Act being necessary therefor, the same shall be effective from and after its passage and approval."

RESEARCH REFERENCES

ALR. Tort liability of medical society or professional association for failure to discipline or investigate negligent or otherwise incompetent medical practitioner. 72 ALR 4th 1148.

Ark. L. Rev. Medical and Dental Cor-

porations: A Step Toward Tax Equality, 15 Ark. L. Rev. 366.

UALR L.J. Mathews, Corporate Statutes—Which One Applies?, 13 UALR L.J. 79.

CASE NOTES

ANALYSIS

Legislative intent.
State action immunity.

Legislative Intent.

The legislature, in enacting this subchapter, clearly intended to restrict trade competition in the dentistry field. *Brazil v. Arkansas Bd. of Dental Exmrs.*, 593 F. Supp. 1354 (E.D. Ark. 1984), *aff'd*, 759 F.2d 674 (8th Cir. 1985).

State Action Immunity.

Actions of the dental board and its officers which prohibited competition fell within the state action immunity doctrine and did not give rise to liability under the Sherman Antitrust Act. *Brazil v. Arkansas Bd. of Dental Exmrs.*, 593 F. Supp. 1354 (E.D. Ark. 1984), *aff'd*, 759 F.2d 674 (8th Cir. 1985).

4-29-401. Title and definitions.

- (a) This subchapter may be cited as the “Dental Corporation Act”.
- (b) As used in this subchapter, unless the context otherwise requires:
 - (1) “Beneficial owner” means an individual who is the grantor and sole trustee of a revocable living trust wherein the individual reserves the unrestricted right to revoke the trust;
 - (2) “Professional service” means any type of professional service which may be legally performed only pursuant to license or other legal personal authorization, for example: the personal service rendered by certified public accountants, architects, engineers, dentists, doctors, and attorneys at law; and
 - (3) “Shareholder” means either the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares of a revocable living trust where the shares are registered in the records of the corporation in the name of the revocable living trust.

History. Acts 1961, No. 471, § 1; A.S.A. 1947, § 64-1801; Acts 1997, No. 306, § 3.
Amendments. The 1997 amendment added (b).

Cross References. Dentists, dental hygienists, and dental assistants, § 17-82-101 et seq.

4-29-402. Application of Arkansas Business Corporation Act.

- (a) The Arkansas Business Corporation Act of 1987, § 4-27-101 et seq., shall be applicable to such corporations, including their organization, except that the required number of incorporators of a dental corporation shall be one (1) or more, and they shall enjoy the powers and privileges and be subject to the duties, restrictions, and liabilities of other corporations, except so far as the same may be limited or enlarged by this subchapter.
- (b) If any provision of this subchapter conflicts with the Arkansas Business Corporation Act of 1987, § 4-27-101 et seq., this subchapter shall take precedence.

History. Acts 1961, No. 471, § 3; 1970 (Ex. Sess.), No. 13, § 6; A.S.A. 1947, § 64-1803; Acts 2001, No. 728, § 1.

Publisher's Notes. Acts 1970 (Ex. Sess.), No. 13, § 7 provided that the purpose and intent of the act was to permit the formation of a professional corporation by one or more persons under § 4-29-201 et seq.

Amendments. The 2001 amendment inserted "of 1987" throughout and substituted "§ 4-27-101 et seq." for "§ 4-26-101 et seq." throughout.

Cross References. Business Corporation Act of 1987, § 4-27-101 et seq.

4-29-403. Dentist-patient relationship unaltered.

This subchapter does not alter any law applicable to the relationship between a dentist furnishing dental service and a person receiving the service, including liability arising out of the service.

History. Acts 1961, No. 471, § 15; A.S.A. 1947, § 64-1815.

4-29-404. Formation of corporation — Employee licensing required.

One (1) or more persons licensed pursuant to the Arkansas Dental Practice Act, § 17-82-101 et seq., may associate to form a corporation pursuant to the Arkansas Business Corporation Act of 1987, § 4-27-101 et seq., to own, operate, and maintain an establishment for the study, diagnosis, and treatment of dental ailments and injuries and to promote dental and scientific research and knowledge. However, treatment, consultation, or advice may be given by employees of the corporation only if they are licensed pursuant to the Arkansas Dental Practice Act, § 17-82-101 et seq.

History. Acts 1961, No. 471, § 2; 1970 (Ex. Sess.), No. 13, § 5, A.S.A. 1947, § 64-1802; Acts 2001, No. 728, § 4.

Publisher's Notes. Acts 1970 (Ex. Sess.), No. 13, § 7 provided that the purpose and intent of the act was to permit the formation of a professional corpora-

tion by one or more persons under § 4-29-201 et seq.

Amendments. The 2001 amendment inserted "of 1987" and substituted "§ 4-27-101 et seq.," for "§ 4-26-101 et seq.," and made minor punctuation changes.

CASE NOTES

ANALYSIS

Denturists.
Nonlicensed persons.

Denturists.

The General Assembly meant to preclude mere denturists, acting in concert with licensed dentists, from owning or managing dental facilities where nonlicensed persons would make impressions for dentures. *Brazil v. Arkansas Bd.*

of Dental Exmrs., 593 F. Supp. 1354 (E.D. Ark. 1984), aff'd, 759 F.2d 674 (8th Cir. 1985).

Nonlicensed Persons.

Nonlicensed persons may not form a dental corporation, whether they seek to do so individually, with other nonlicensed persons, or with licensed persons. *Brazil v. Arkansas Bd. of Dental Exmrs.*, 593 F. Supp. 1354 (E.D. Ark. 1984), aff'd, 759 F.2d 674 (8th Cir. 1985).

4-29-405. Corporate name.

(a) The corporate name shall contain the names of one (1) or more of the shareholders. However, the name of a person who is not employed by the corporation shall not be included in the corporate name, except that the name of a deceased shareholder may continue to be included in the corporate name for one (1) year following the decease of the shareholder.

(b) A corporation organized under this subchapter need not include in its name the reference to corporation, incorporation, company, or the abbreviations “Co.” or “Inc.” as is now required of business corporations.

History. Acts 1961, No. 471, § 4;
A.S.A. 1947, § 64-1804.

4-29-406. Officers, directors, and shareholders.

All of the officers, directors, and shareholders of a corporation subject to this subchapter shall at all times be persons licensed pursuant to the Arkansas Dental Practice Act, § 17-82-101 et seq. No person who is not so licensed shall have any part in the ownership, management, or control of the corporation, nor may any proxy to vote any shares of the corporation be given to a person who is not so licensed.

History. Acts 1961, No. 471, § 14;
A.S.A. 1947, § 64-1814.

CASE NOTES

ANALYSIS

Denturists.
Nonlicensed persons. *

Denturists.

The General Assembly meant to preclude mere denturists, acting in concert with licensed dentists, from owning or managing dental facilities where nonlicensed persons would make impressions for dentures. *Brazil v. Arkansas Bd.*

of Dental Exmrs., 593 F. Supp. 1354 (E.D. Ark. 1984), aff'd, 759 F.2d 674 (8th Cir. 1985).

Nonlicensed Persons.

Nonlicensed persons may not form a dental corporation, whether they seek to do so individually, with other nonlicensed persons, or with licensed persons. *Brazil v. Arkansas Bd. of Dental Exmrs.*, 593 F. Supp. 1354 (E.D. Ark. 1984), aff'd, 759 F.2d 674 (8th Cir. 1985).

4-29-407. Employees.

Each individual employee licensed pursuant to the Arkansas Dental Practice Act, § 17-82-101 et seq., who is employed by a corporation subject to this subchapter shall remain subject to reprimand or discipline for his or her conduct under the provisions of the Arkansas Dental Practice Act, § 17-82-101 et seq.

History. Acts 1961, No. 471, § 16;
A.S.A. 1947, § 64-1816.

CASE NOTES

Cited: *Brazil v. Arkansas Bd. of Dental Exmrs.*, 593 F. Supp. 1354 (E.D. Ark. 1984), *aff'd*, 759 F.2d 674 (8th Cir. 1985).

4-29-408. Certificate of registration — Issuance, renewal, etc.

(a) No corporation shall open, operate, or maintain an establishment for any of the purposes set forth in § 4-29-404 without a certificate of registration from the Arkansas State Board of Dental Examiners.

(b) Application for the registration shall be made to the board in writing and shall contain the name and address of the corporation and such other information as may be required by the board.

(c)(1) Upon receipt of the application, the board shall make an investigation of the corporation.

(2) If the board finds that the incorporators, officers, directors, and shareholders are each licensed pursuant to the Arkansas Dental Practice Act, § 17-82-101 *et seq.*, and if no disciplinary action is pending before the board against any of them, and if it appears that the corporation will be conducted in compliance with law and the regulations of the board, the board shall issue upon payment of a registration fee of twenty-five dollars (\$25.00) a certificate of registration which shall remain effective until January 1 following the date of the registration.

(d) Upon written application of the holder, accompanied by a fee of ten dollars (\$10.00), the board shall annually renew the certificate of registration if the board finds that the corporation has complied with its regulations and the provisions of this subchapter.

(e) The certificate of registration shall be conspicuously posted upon the premises to which it is applicable.

(f) In the event of a change of location of the registered establishment, the board, in accordance with its regulations, shall amend the certificate of registration so that it shall apply to the new location.

(g) No certificate of registration shall be assignable.

History. Acts 1961, No. 471, §§ 5-9; A.S.A. 1947, §§ 64-1805 — 64-1809.

CASE NOTES

Cited: *Brazil v. Arkansas Bd. of Dental Exmrs.*, 593 F. Supp. 1354 (E.D. Ark. 1984), *aff'd*, 759 F.2d 674 (8th Cir. 1985).

4-29-409. Certificate of registration — Suspension or revocation.

(a) The Arkansas State Board of Dental Examiners may suspend or revoke any certificate of registration for any of the following reasons:

(1) The revocation or suspension of the license to practice dentistry of any officer, director, shareholder, or employee not promptly removed or discharged by the corporation;

(2) Unethical professional conduct on the part of any officer, director, shareholder, or employee not promptly removed or discharged by the corporation;

(3) The death of the last remaining shareholder; or

(4) Upon finding that the holder of a certificate has failed to comply with the provisions of this subchapter or the regulations prescribed by the board.

(b) Before any certificate of registration is suspended or revoked, the holder shall be given written notice of the proposed action and the reasons therefor and shall be given a public hearing by the board with the right to produce testimony concerning the charges made. The notice shall also state the place and date of the hearing, which shall be at least five (5) days after service of the notice.

History. Acts 1961, No. 471, §§ 10, 11;
A.S.A. 1947, §§ 64-1810, 64-1811.

CASE NOTES

Cited: *Brazil v. Arkansas Bd. of Dental Exmrs.*, 593 F. Supp. 1354 (E.D. Ark. 1984), *aff'd*, 759 F.2d 674 (8th Cir. 1985).

4-29-410. Certificate of registration — Appeal from denial, suspension, or revocation.

(a) Any corporation whose application for a certificate of registration has been denied or whose registration has been suspended or revoked may appeal within thirty (30) days after notice of the action by the board to the Pulaski County Circuit Court.

(b) The court shall inquire into the cause of the board's action and may affirm or reverse the decision and order a further hearing by the board, or may order the board to grant the appellant a certificate of registration.

(c) The appeal shall be in the manner provided by law.

(d) Notice of appeal shall be served upon the secretary of the board by serving the secretary a copy thereof within thirty (30) days after the board has notified the appellant of its decision. The service may be by registered or certified mail.

History. Acts 1961, No. 471, §§ 12, 13;
A.S.A. 1947, §§ 64-1812, 64-1813.

4-29-411. Shares of deceased or disqualified shareholder — Price.

If the articles of incorporation or bylaws of a corporation subject to this subchapter fail to state a price or method of determining a fixed

price at which the corporation or its shareholders may purchase the shares of a deceased shareholder or a shareholder no longer qualified to own shares in the corporation, then the price for the shares shall be the book value as of the end of the month immediately preceding the death or disqualification of the shareholder. Book value shall be determined from the books and records of the corporation in accordance with the regular method of accounting used by the corporation.

History. Acts 1961, No. 471, § 17;
A.S.A. 1947, § 64-1817.

CHAPTER 30

COOPERATIVE ASSOCIATIONS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. COOPERATIVE BANKS.

CASE NOTES

Purpose.

The purpose of the legislature in passing this chapter was to supply a legal agency to take the place of the former almost futile and more dangerous voluntary association and not to destroy that

unity producing the groups nor the beneficial effect of voluntary associations of allied interests. *Stuttgart Coop. Buyers Ass'n v. Louisiana Oil Ref. Corp.*, 194 Ark. 779, 109 S.W.2d 682 (1937).

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 4-30-101. Definition.
- 4-30-102. Purpose of chapter.
- 4-30-103. Effect of chapter upon § 2-2-401 et seq.
- 4-30-104. Acceptance of benefits of chapter.
- 4-30-105. Administration of chapter.
- 4-30-106. Corporate title.
- 4-30-107. Membership — Purposes.
- 4-30-108. Articles of incorporation.
- 4-30-109. Bylaws.
- 4-30-110. Board of directors — Officers.
- 4-30-111. Prerequisite for commencing business.

SECTION.

- 4-30-112. Percentage of stock ownership limited — Voting by members.
- 4-30-113. Books and records — Right of inspection.
- 4-30-114. Annual reports.
- 4-30-115. Forms prescribed by Secretary of State.
- 4-30-116. Organization, ownership, control, etc., of other corporations or associations.
- 4-30-117. Liability of members for association's debts.
- 4-30-118. Tort liability of cooperative.

A.C.R.C. Notes. Acts 1989, No. 493, § 5 provided: "The provisions of the general corporation laws of this State, and all powers and rights thereunder, shall apply

to the cooperative corporations created under Subchapters 1 and 2 of Chapter 30 of Title 4 of the Arkansas Code, except where such provisions are in conflict with

or inconsistent with the express provisions of Subchapter 1 and 2 of Chapter 30 of Title 4 of the Arkansas Code.”

Cross References. Contributions for charitable, scientific, or educational purposes authorized, § 4-25-103.

Corporate franchise tax, § 26-54-101 et seq.

Effective Dates. Acts 1947, No. 362, § 3: approved Mar. 28, 1947. Emergency clause provided: “By reason of the fact that cooperatives are engaged in the operation of various rural electrification systems, and various other activities, and, there being no remedy for recovery of injury to person or damage to property caused by the negligent, careless, wrongful or wanton acts of the agents, servants and employees of the said cooperatives, an

emergency is declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety, and giving to the people the right of redress for wrongs committed upon their person and property, this act shall take effect and be in force from and after its passage.”

Acts 1989, No. 493, § 8: Mar. 13, 1989. Emergency clause provided: “It is hereby found and determined by the General Assembly that the cooperative corporation statutes of 1921 are in need of updating and an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

RESEARCH REFERENCES

ALR. Validity, construction, and application of statutes, or of condominium association’s bylaws or regulations, restricting number of units that may be owned by single individual or entity. 39 ALR 4th 88.

Liability of owner of unit in condominium, recreational development, time-share property, or the like, for assessment in support of common facilities levied against and unpaid by prior owner. 39 ALR 4th 114.

Validity and enforceability of condominium owner’s covenant to pay dues or fees to sports or recreational facility. 39 ALR 4th 129.

Condominium association’s liability to unit owner for injuries caused by third person’s criminal conduct. 59 ALR 4th 489.

Am. Jur. 18 Am. Jur. 2d, Coop. Assoc., § 1 et seq.

Ark. L. Rev. Organization of Agricultural Marketing Cooperatives, 5 Ark. L. Rev. 173.

Fee and Hoberg, Potential Liability of Directors of Agricultural Cooperatives, 37 Ark. L. Rev. 60.

UALR L.J. Mathews, Corporate Statutes—Which One Applies?, 13 UALR L.J. 83.

4-30-101. Definition.

As used in this chapter, unless the context otherwise requires, the “cooperative plan” shall be construed to mean a business concern that distributes the net profits of its business by:

- (1) The payment of a fixed dividend upon its stock;
- (2) The remainder prorated to its several stockholders upon their purchases from or sales to the concern or both such purchases and sales.

History. Acts 1921, No. 632, § 2; Pope’s Dig., § 2263; A.S.A. 1947, § 64-1503.

4-30-102. Purpose of chapter.

The purpose of this chapter is to provide for the formation and carrying on of cooperative associations and to provide for the rights, powers, liabilities, and duties of such cooperative associations.

History. Acts 1921, No. 632, § 1; Pope's Dig., § 2262; A.S.A. 1947, § 64-1501.

CASE NOTES

Cited: Robertson v. White, 635 F. Supp. 851 (W.D. Ark. 1986).

4-30-103. Effect of chapter upon § 2-2-401 et seq.

The provisions of this chapter shall not be construed in any manner to limit, restrict, enlarge, modify, change, conflict with, or in any manner whatever affect the provisions of § 2-2-401 et seq., it being the intent of the General Assembly that each of those sections and this chapter shall be independent of each other.

History. Acts 1921, No. 632, § 17; Pope's Dig., § 2278; A.S.A. 1947, § 64-1517.

4-30-104. Acceptance of benefits of chapter.

(a) All cooperative corporations, companies, or associations organized and doing business under prior statutes, or which have attempted to so organize and do business, shall have the benefit of all the provisions of this chapter and may be bound thereby on paying the fees provided for in this chapter and filing with the Secretary of State a written declaration signed and sworn to by its president and secretary, to the effect that the cooperative company or association has by a majority vote of its stockholders decided to accept the benefits of and be bound by the provisions of this chapter.

(b) No association organized under this chapter shall be required to do or perform anything not specifically required herein in order to become a corporation or to continue its business as such.

History. Acts 1921, No. 632, § 11; Pope's Dig., § 2272; A.S.A. 1947, § 64-1512.

4-30-105. Administration of chapter.

The provisions of this chapter shall be administered by the Secretary of State, who shall have power to employ such help as in his or her judgment is necessary to carry into effect the provisions of this chapter.

History. Acts 1921, No. 632, § 1; Pope's Dig., § 2262; A.S.A. 1947, §§ 64-1501, 64-1502.

Publisher's Notes. Acts 1933, No. 153, §§ 1, 2 abolished the Department or

Bureau of Mines, Manufacturers, and Agriculture and transferred the duties of the Commissioner of Mines, Manufacturers, and Agriculture, with respect to cooperative associations, to the Secretary of State.

CASE NOTES

Banking Associations.

Bank commissioner has no supervision over a banking association organized under this chapter. McDonald v. Wasson, 188

Ark. 782, 67 S.W.2d 722 (1934) (decision prior to enactment of § 4-30-201 et seq.)

Cited: Robertson v. White, 635 F. Supp. 851 (W.D. Ark. 1986).

4-30-106. Corporate title.

The title of the corporation may begin with "The" and shall end with "Association", "Company", "Corporation", "Exchange", "Society", "Union", or "Incorporated" or its abbreviation "Inc."

History. Acts 1921, No. 632, § 2; Pope's Dig., § 2263; A.S.A. 1947, § 64-1503; Acts 1989, No. 493, § 1.

4-30-107. Membership — Purposes.

Any number of persons, corporations, or entities may associate themselves together as a cooperative corporation for the purpose of conducting any agricultural, dairy, mercantile, banking, mining, manufacturing, or mechanical business on the cooperative plan.

History. Acts 1921, No. 632, § 2; Pope's Dig., § 2263; A.S.A. 1947, § 64-1503; Acts 1989, No. 493, § 2.

CASE NOTES

Cited: Stuttgart Coop. Buyers Ass'n v. Louisiana Oil Ref. Corp., 194 Ark. 779, 109 S.W.2d 682 (1937).

4-30-108. Articles of incorporation.

(a) The members shall sign and acknowledge written articles of incorporation which shall contain:

- (1) The name of the corporation;
- (2) The name and residences of the persons forming the corporation;
- (3) The purpose of the organization;
- (4) The principal place of business;
- (5) The amount of capital stock;
- (6) The number of shares and the par value of each share;
- (7) The number of directors and the names of those selected for the first term; and
- (8) The time for which the corporation is to continue, not to exceed fifty (50) years.

(b) The original articles of incorporation or a certified copy of them shall be filed with the Secretary of State, who shall return to the corporation a certified copy of them, with the date of filing and attested with the seal of his or her office.

(c) For filing the articles of incorporation and amendments thereto under this subchapter, the same fees shall be paid to the Secretary of State as are now required under the general corporation law.

History. Acts 1921, No. 632, §§ 3-5; Pope's Dig., §§ 2264 — 2266; A.S.A. 1947, §§ 64-1504 — 64-1506.

4-30-109. Bylaws.

(a) Each corporation shall formulate bylaws prescribing the duties of the directors and officials, the manner of distributing the profits of its business, the manner of becoming a member, and such other rules and instructions to its officials and members as will tend to make the corporation an effective business organization.

(b) Any association formed under this chapter may pass bylaws to govern itself in the carrying out of the provisions of this chapter which are not inconsistent with the provisions of this chapter.

History. Acts 1921, No. 632, §§ 9, 13; Pope's Dig., §§ 2269, 2274; A.S.A. 1947, §§ 64-1510, 64-1514.

4-30-110. Board of directors — Officers.

(a) Every association shall be managed by a board of not fewer than five (5) directors.

(b) The directors shall be elected by the stockholders of the association at such times and for such terms of office as the bylaws may prescribe and shall hold office for the time for which elected and until their successors are elected and shall enter upon the discharge of their duties.

(c) A majority of the stockholders shall have power at any regular or special stockholders' meeting legally called to remove any director or official for cause and fill the vacancy, and thereupon the director so removed shall cease to be a director of the association.

(d)(1) The officers of every association shall be a president, one (1) or more vice presidents, a secretary, and a treasurer and such other officers as may be deemed necessary by the board of directors.

(2) The offices of secretary and treasurer may be combined into the office of secretary-treasurer.

History. Acts 1921, No. 632, § 7; Pope's Dig., § 2268; A.S.A. 1947, § 64-1508; Acts 1989, No. 493, § 3.

4-30-111. Prerequisite for commencing business.

No corporation organized under the provisions of this chapter shall commence business until at least twenty percent (20%) of its capital stock has been paid for in actual cash and a sworn statement to that effect has been filed with the Secretary of State, and his or her receipt for the statement shall be construed as a permit to do business.

History. Acts 1921, No. 632, § 6; Pope's Dig., § 2267; A.S.A. 1947, § 64-1507.

4-30-112. Percentage of stock ownership limited — Voting by members.

(a) No person shall be allowed to own or have an interest in more than ten percent (10%) of the capital stock of the corporation.

(b) Voting upon all questions shall be by members and not by stock.

History. Acts 1921, No. 632, § 8; Pope's Dig., § 2270; A.S.A. 1947, § 64-1509.

CASE NOTES**Stock Certificates.**

Certificates of stock in corporations organized under this chapter are not negotiable; for any kind of transfer or negotiation to be effective, it must be made with

the consent of the association. *Stuttgart Coop. Buyers Ass'n v. Louisiana Oil Ref. Corp.*, 194 Ark. 779, 109 S.W.2d 682 (1937).

4-30-113. Books and records — Right of inspection.

(a) Each corporation organized under the provisions of this chapter shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its shareholders and board of directors and shall keep at its registered office or principal place of business in this state a record of its shareholders, giving the names and addresses of all shareholders and the number and class of the shares held by each.

(b)(1) Any person who shall have been a shareholder of record for at least six (6) months immediately preceding his or her demand shall, upon written demand therefor, be furnished a full itemized accounting of all expenditures of the funds of the corporation during the preceding six-month period and shall have the right to examine, in person or by agent or attorney, at any reasonable time, for any proper purpose, its books and records of account, minutes, and record of shareholders and to make extracts therefrom.

(2) Upon refusal by the corporation or by an officer or agent of the corporation to furnish an accounting or to permit an inspection of the corporation's books, records of account, minutes, or record of shareholders as provided in subdivision (b)(1) of this section, the person making

demand therefor may file a civil action in the circuit court of the county in which the corporation maintains either its principal place of business or its registered office for the purpose of securing an order of the court directing the corporation, its officers, and agents to comply with the request.

(3) The preceding shall be advanced upon the docket of the court, and the court shall hear the parties summarily, by affidavit or otherwise; and if the applicant establishes that he is qualified and entitled to the accounting or the inspection, the court shall grant an order for the accounting or the inspection, subject to any limitations which the court may prescribe; and the court may grant such other relief as to the court may seem just and proper.

(4) The court may deny or restrict inspection or the request for information if it finds that the shareholder has improperly used information secured through any prior accounting or examination of the books and records of accounts or minutes, or record of shareholders, of the corporation or of any other corporation, or that he or she was not acting in good faith or for a proper purpose in making his or her demand.

(c) Upon the written request of any shareholder of a corporation, the corporation shall mail to the shareholder its most recent financial statements showing in reasonable detail its assets and liabilities and the results of its operations.

History. Acts 1921, No. 632, § 10; Pope's Dig., § 2271; Acts 1969, No. 39, § 1; A.S.A. 1947, § 64-1511.

4-30-114. Annual reports.

Each corporation organized under the provisions of this chapter shall make an annual report to the Secretary of State, as is required of other corporations. However, the cooperative corporation shall be required to report the names of its stockholders and the amount of the stock owned by each for such years only as may be required by the Secretary of State.

History. Acts 1921, No. 632, § 10; Pope's Dig., § 2271; Acts 1969, No. 39, § 1; A.S.A. 1947, § 64-1511.

4-30-115. Forms prescribed by Secretary of State.

The form for receipts and any other papers necessary for carrying into effect the provisions of this chapter shall be prescribed by the Secretary of State.

History. Acts 1921, No. 632, § 12; Pope's Dig., § 2273; A.S.A. 1947, § 64-1513.

4-30-116. Organization, ownership, control, etc., of other corporations or associations.

An association organized or existing hereunder may organize, form, operate, own, control, have an interest in, own stock of, or be a member of any corporation or association, with or without capital stock, engaged in any of the activities authorized under this chapter, whether formed under this or any other act of this or any other state. This chapter permits the federation of cooperative business enterprise in Arkansas.

History. Acts 1921, No. 632, § 14; Pope's Dig., § 2275; A.S.A. 1947, § 64-1515; Acts 1989, No. 493, § 4.

4-30-117. Liability of members for association's debts.

Except for debts lawfully contracted between him or her and the association, no member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on his or her membership fee or subscription to the capital stock, including any unpaid balance on any promissory notes given in payment thereof.

History. Acts 1921, No. 632, § 16; Pope's Dig., § 2277; A.S.A. 1947, § 64-1516.

4-30-118. Tort liability of cooperative.

All cooperative corporations and associations organized under the laws of the State of Arkansas shall be liable and subject to being sued in the courts of the state for their torts resulting from the negligent acts of their agents, servants, and employees committed in the scope of their employment for the cooperatives.

History. Acts 1947, No. 362, § 1; A.S.A. 1947, § 64-1525.

CASE NOTES

Cited: Michael v. St. Paul Mercury Indem. Co., 92 F. Supp. 140 (W.D. Ark. 1950).

SUBCHAPTER 2 — COOPERATIVE BANKS

SECTION.	SECTION.
4-30-201. Definition.	porate existence.
4-30-202. Applicability of subchapter.	4-30-206. Noncomplying banks — Supervision by commissioner.
4-30-203. Subchapter cumulative.	4-30-207. Banks declared investment companies — Penalty — Exception.
4-30-204. Future incorporation of cooperative banks prohibited.	
4-30-205. Conditional termination of cor-	

A.C.R.C. Notes. Acts 1989, No. 493, § 5 provided: "The provisions of the general corporation laws of this State, and all powers and rights thereunder, shall apply to the cooperative corporations created under Subchapters 1 and 2 of Chapter 30 of Title 4 of the Arkansas Code, except where such provisions are in conflict with or inconsistent with the express provisions of Subchapter 1 and 2 of Chapter 30 of Title 4 of the Arkansas Code."

Preambles. Acts 1937, No. 287 contained a preamble which read: "Whereas, there have been incorporated under the provisions of Act No. 632 of the Acts of the General Assembly of Arkansas of 1921 a number of so-called "cooperative banks," which are now engaged in performing various banking functions with only nominal capital and without any supervision of any department of the State, some being located in cities, towns and communities where adequate banking facilities are being provided by a state or national bank; and

"Whereas, such associations are erroneously regarded by the public as banking institutions with adequate capital and su-

pervision to protect their depositors against loss; and

"Whereas, there is no necessity for the continued existence of those associations which are located in communities in which a bank is situated or doing business; and

"Whereas, those so-called cooperative banks located in communities which are not provided with the services of a banking institution should make such changes in their corporate names so that the public will clearly understand that they are not banks and that they should be brought under proper supervision;

"Therefore...."

Effective Dates. Acts 1937, No. 287, § 4: Mar. 22, 1937. Emergency clause provided: "Since there is necessity for the immediate initiation of the measures and things hereby required in order to prevent unsound and dangerous banking practices which might result in widespread losses to the people of this State, an emergency is therefore hereby declared and this act shall become operative and shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

Am. Jur. 18 Am. Jur. 2d, Coop. Assoc., § 8.

4-30-201. Definition.

As used in this subchapter, unless the context otherwise requires, "cooperative bank" means a corporation or association organized under the provisions of this chapter which receives deposits and forwards checks, drafts, or orders for collection.

History. Acts 1921, No. 632, § 18 as added by Acts 1937, No. 287, § 1; Pope's Dig., § 2279; A.S.A. 1947, § 64-1518.

4-30-202. Applicability of subchapter.

Nothing in this subchapter shall apply to or affect in any manner the so-called agricultural credit corporations or any other type of association organized under this chapter which does not receive deposits or forward checks, drafts, or orders for collection.

History. Acts 1921, No. 632, § 18 as added by Acts 1937, No. 287, § 1; Pope's Dig., § 2279; A.S.A. 1947, § 64-1518.

4-30-203. Subchapter cumulative.

All parts and portions of this subchapter which confer authority or jurisdiction upon the Bank Commissioner or which are in aid or furtherance of such authority or jurisdiction are declared to be cumulative to all laws and parts of laws relating to investment companies, and these portions shall be interpreted and construed accordingly.

History. Acts 1937, No. 287, § 3; A.S.A. 1947, § 64-1524.

4-30-204. Future incorporation of cooperative banks prohibited.

After March 22, 1937, it shall not be lawful to organize or create and there shall not be organized or created any cooperative bank as defined in § 4-30-201, and the Secretary of State shall issue no certificates of incorporation or charters for cooperative banks.

History. Acts 1921, No. 632, § 19 as added by Acts 1937, No. 287, § 1; Pope's Dig., § 2280; A.S.A. 1947, § 64-1519.

4-30-205. Conditional termination of corporate existence.

The corporate existence of all of such cooperative banks organized under this chapter prior to March 22, 1937, which are situated in cities, towns, and communities in which there is established and placed in operation a state or national bank or a teller's window branch thereof after March 22, 1937, shall expire and terminate not later than eighteen (18) months from the date that the state or national bank or a teller's window branch thereof opens or opened for business. However, no teller's window branch of any bank shall be placed in any incorporated town where a cooperative bank is in existence in the event a majority of the real property owners within the incorporated limits of the town or city shall protest by petition the State Bank Department's granting its permission to place a teller's window in the city or town.

History. Acts 1921, No. 632, § 21 as added by Acts 1937, No. 287, § 1; Pope's Dig., § 2282; A.S.A. 1947, § 64-1521.

4-30-206. Noncomplying banks — Supervision by commissioner.

On failure of any cooperative bank organized under this chapter prior to March 22, 1937, to comply with the provisions of § 4-30-205, it shall become the duty of the Bank Commissioner of the State of Arkansas to

take charge of the cooperative bank under the provisions of Acts 1931, No. 109, § 8 [Repealed].

History. Acts 1921, No. 632, § 22 as added by Acts 1937, No. 287, § 1; Pope's Dig., § 2283; A.S.A. 1947, § 64-1522.

4-30-207. Banks declared investment companies — Penalty — Exception.

(a) Every cooperative bank organized under this chapter prior to March 22, 1937, which is not situated in a city, town, or community in which there is also situated a state or national bank or a teller's window branch thereof is declared to be an investment company and shall be placed under the regulation and supervision of the State Securities Department, in the same manner as now provided by law for other investment companies. The Securities Commissioner is authorized, empowered, and directed to make and promulgate all such rules and regulations not inconsistent herewith as shall be necessary or convenient for the administration and carrying out of this subchapter and for the supervision and control of all such organizations.

(b) Failure to comply with any of the requirements of this section subjects the cooperative bank which is guilty of the failure and its president, its secretary, and its directors to the penalties provided for violation of the Arkansas Securities Act.

(c) However, nothing in this subchapter shall apply to or affect any cooperative bank organized under this chapter prior to March 22, 1937, and situated on the campus of a school, college, or university and employed by the school as a means of instruction.

History. Acts 1921, No. 632, § 23 as added by Acts 1937, No. 287, § 1; Pope's Dig., § 2284; A.S.A. 1947, § 64-1523.

Arkansas Securities Act referred to in this section, securities are currently regulated by § 23-42-101 et seq.

Publisher's Notes. With regard to the

CHAPTER 31

FOREIGN INVESTORS

SUBCHAPTER.

1. GENERAL PROVISIONS. [RESERVED.]
2. QUALIFICATION TO DO BUSINESS.
3. SERVICE AS FIDUCIARY.
4. FILING PROCEDURE FOR FOREIGN BUSINESS TRUSTS.

RESEARCH REFERENCES

Ark. L. Notes. Mathews, A Review of Other Organizations Enacted Since 1990, Arkansas Statutes Affecting Business and 1998 Ark. L. Notes 65.

SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved]

SUBCHAPTER 2 — QUALIFICATION TO DO BUSINESS

SECTION.

4-31-201. Permitted activities generally.

4-31-202. Activities as fiduciary, trustee, or agent of trust.

4-31-203. Extent of benefits and application of subchapter.

SECTION.

4-31-204. Actions — Service of process — Venue.

4-31-205. Taxes.

Effective Dates. Acts 1995, No. 495, § 4: applicable for taxable years beginning on or after January 1, 1996.

4-31-201. Permitted activities generally.

Any foreign mutual savings bank, foreign mutual savings fund society, national banking association, foreign bank and trust company, or foreign insurance company, or any foreign corporation of which all the capital stock, except directors' qualifying shares, is owned by one (1) or more of the above-named organizations, shall not be considered to be transacting or engaging in business in this state by reason of carrying on in this state any of the following activities if the organization is not organized under the laws of this state and does not maintain a place of business within this state:

(1) The acquisition or making of loans, or participation or interests therein, secured by deeds of trust, mortgages, or mortgage notes on real property situated in Arkansas pursuant to commitment agreements or arrangements made prior to or following the origination or creation of the loans;

(2) The making, directly or through or in participation with national or state banks having their banking offices in this state or other Arkansas concerns engaged within this state in the business of making or servicing such loans, of loans secured by such mortgages or mortgage notes, or loans secured by assignments or pledges of obligations secured by such mortgages or mortgage notes;

(3) The ownership, modification, renewals, extensions, transfers, or foreclosure of those loans, mortgages, or mortgage notes, or the acceptance of substitute or additional obligators thereon;

(4) The maintenance of bank accounts in national or state banks having their banking offices within this state in connection with the collection or servicing of those loans, mortgages, or mortgage notes;

(5) The maintenance of depositary or pledge-holder agreements or arrangements with national or state banks having their banking offices within this state in connection with the taking of assignments or pledges of such loans, mortgages, or mortgage notes;

(6) The making, collection, and servicing of those loans, mortgages, or mortgage notes directly or through an Arkansas concern engaged in the business within this state of servicing real estate loans;

(7) The taking of deeds to the mortgaged property for a reasonable period of time either in lieu of foreclosure or for the purpose of transferring title either to the Federal Housing Administration or to the Department of Veterans Affairs as the insurer or guarantor;

(8) The acquisition of title to real property for a reasonable period of time under foreclosure sale or from the owner in lieu of foreclosure;

(9) The management, rental, maintenance, and sale, or the operating, maintaining, renting, or otherwise dealing with, selling, or disposing of real property acquired under foreclosure sale or by agreement in lieu thereof;

(10) The maintaining or defending of any actions or suits relating to those loans, deeds of trust, mortgages, mortgage notes, agreements, or other arrangements or activities referred to herein or incidental thereto; and

(11) The physical inspection and appraisal of real property in Arkansas as security for mortgage notes or mortgages and negotiations for those loans.

History. Acts 1989, No. 947, § 2.

4-31-202. Activities as fiduciary, trustee, or agent of trust.

(a) The following shall likewise not be considered to be transacting or engaging in business in this state:

(1) The acquisition or making of loans or participation or interest therein which is secured by mortgages or mortgage notes on real property located in this state; or

(2) The doing of any or all the other acts or things with respect thereto enumerated in this subchapter by:

(A) Any such bank, trust company, or any foreign corporation when acting as fiduciary, trustee, or agent of any trust, whether testamentary or inter vivos, including foundations and trusts established for the purpose of funding pension, profit-sharing, or employee benefit plans;

(B) An endowed institution, foundation, or eleemosynary corporation;

(C) Any corporation chartered under the laws of another state as a group insurance and annuity association and engaged in the business of insurance, annuities, pensions, and retirement plans for any group of persons, educational institutions, and others; or

(D) Any foreign corporation all the capital stock of which, except directors' qualifying shares, is owned by one (1) or more of the entities referred to in subdivisions (a)(2)(A)-(C) of this section.

(b) Any foreign corporation when so acting as fiduciary, trustee, or agent and any such trust, endowed institution, foundation, eleemosynary corporation, or group insurance and annuity association shall be

entitled to all the rights, privileges, and exceptions set forth in this subchapter.

History. Acts 1989, No. 947, § 3.

4-31-203. Extent of benefits and application of subchapter.

(a) Nothing in this subchapter shall be construed as limiting the benefits and application of this subchapter to loans insured or guaranteed by the Federal Housing Administration, the Department of Veterans Affairs, or any other governmental agency or department.

(b) The benefits of this subchapter shall extend to and include all loans or participations or interests therein secured by mortgages or mortgage notes on real property situated in Arkansas, whether or not insured or guaranteed.

(c) Nothing in this subchapter shall be construed to permit any foreign corporation to do business in violation of the small loan law of the State of Arkansas nor of the laws of Arkansas governing the organization and operation of building and loan associations or societies, or savings and loan associations or societies, or any insurance company, nor to limit the authority of foreign corporations authorized to do unlimited business under the general laws of Arkansas, or to qualify to be so authorized.

History. Acts 1989, No. 947, § 1.

4-31-204. Actions — Service of process — Venue.

(a)(1) Any bank, trust company, foreign mutual savings bank, pension fund, foreign mutual savings fund society, mutual banking association, foreign insurance company, or any other type of organization defined in this subchapter and investing funds in Arkansas may sue or be sued within this state in relation to such mortgages or deeds of trust on real properties, securities, or debts, and service of process may be performed by service upon any custodian or agent appointed within the state.

(2) If no custodian or agent has been appointed, the Secretary of State shall be and is appointed and shall remain as the duly authorized agent of the organization upon whom the service of process may be had.

(b) The Secretary of State, upon the receipt of process by him or her on the organization, shall forthwith forward notice of the receipt by registered mail, with return receipt requested, to the post office of the nonresident corporation, mutual savings bank, or association and shall make a notation of that fact upon his or her process record to that effect.

(c) In cases where the organization is sued, the venue of the action shall be in the county of the residence of the plaintiffs, or any of them, except where land is involved, in which case venue shall be in the county in which the land, or any part of it, is located.

History. Acts 1989, No. 947, § 4.

4-31-205. Taxes.

(a) No corporation, institution, or entity coming under the provisions of this subchapter and confining its business operations in Arkansas within the limits herein provided shall be required to qualify to do business in this state by filing its charter in the office of the Secretary of State or to pay any tax or fee required to be paid by foreign corporations under any law of this state.

(b) However, the exemption shall not include:

(1) Ad valorem taxes assessed against any real property which the corporation, institution, or entity may own in the State of Arkansas;

(2) Arkansas income, franchise, and privilege tax which may result from the sale, ownership, or control after acquisition of the property by foreclosure, or acquisition in lieu of foreclosure, either by virtue of the value of the specific piece of property so foreclosed or to which title is taken in lieu of foreclosure, or by virtue of the rental or other income realized from the property; or

(3) Arkansas income taxes which may be levied upon financial institutions pursuant to § 26-51-1401 et seq.

History. Acts 1989, No. 947, § 5; 1995, No. 495, § 2.

SUBCHAPTER 3 — SERVICE AS FIDUCIARY**SECTION.**

4-31-301. Intent.

4-31-302. Definitions.

SECTION.

4-31-303. Appointment authorized.

Effective Dates. Acts 1991, No. 402, § 6; Mar. 8, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that the reciprocal authority for foreign banks and trust companies to act as fiduciaries within the State of Arkansas was inadvertently repealed by the enactment of the Arkansas Business Corporation Act of 1987; that this Act reenacts such authority; and that

until this Act becomes effective the authority of foreign banks and trust companies to act as fiduciaries within this State is questionable. Therefore, an emergency is declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

4-31-301. Intent.

The General Assembly has determined that Acts 1979, No. 118 [Repealed], authorized foreign banks and trust companies to act as fiduciaries within this state if the state under which they were organized and have their principal office grants reciprocal authority to Arkansas banks and trust companies, and that such authority was inadvertently repealed by the Arkansas Business Corporation Act of 1987, § 4-27-101 et seq. It is the intent of this section and §§ 4-31-302

and 4-31-303 to reestablish that reciprocal authority and to ratify any transactions that have occurred since the enactment of the Arkansas Business Corporation Act of 1987, § 4-27-101 et seq., and which would have been valid under Acts 1979, No. 118 [Repealed].

History. Acts 1991, No. 402, § 1.

4-31-302. Definitions.

For purposes of this section and §§ 4-31-301 and 4-31-303, “foreign bank or trust company with fiduciary powers” means a bank or trust company organized under the laws of and having its principal office in the District of Columbia or any territory or state of the United States other than the State of Arkansas, and any national bank having its principal office in the District of Columbia or a territory or another state, which bank or trust company is empowered to act as a fiduciary.

History. Acts 1991, No. 402, § 2.

4-31-303. Appointment authorized.

Any foreign bank or trust company with fiduciary powers may be appointed and may serve in the State of Arkansas as trustee of a personal or corporate trust, executor, administrator, guardian of the estate, or in any other fiduciary capacity, whether the appointment is by will, deed, agreement, declaration, indenture, court order, or decree, or otherwise, when and to the extent that the District of Columbia, territory, or other state in which the foreign bank or trust company is organized and has its principal office grants such fiduciary authority to a bank or trust company organized under the laws of and having its principal office in the State of Arkansas, or to a national bank having its principal office in the State of Arkansas.

History. Acts 1991, No. 402, § 2.

SUBCHAPTER 4 — FILING PROCEDURE FOR FOREIGN BUSINESS TRUSTS

SECTION.

4-31-401. Definition.

4-31-402. Filing requirements.

4-31-403. Applicability of law.

SECTION.

4-31-404. Discontinuing trust business.

4-31-405. Merger or consolidation.

4-31-406. Filing fees.

4-31-401. Definition.

For purposes of this subchapter, “business trust” means a foreign unincorporated association or trust created by an instrument under which property is held and managed by trustees for the benefit and profit of such persons as are or may become the holders of a transferable certificate evidencing beneficial interest in the trust.

History. Acts 1999, No. 1366, § 1.

4-31-402. Filing requirements.

(a)(1) A business trust, for the purpose of this subchapter, shall be foreign.

(2) A foreign business trust includes every foreign business trust.

(b) Any foreign business trust desiring to transact business in this state shall deliver to the Secretary of State:

(1) A form provided by the Secretary of State's office or an executed copy of the articles, declaration of trust, or trust agreement by which the trust was created and all amendments thereto, or a true copy thereof certified to be such by a trustee of the trust before a notary or by a public official of another state territory or country in whose office an executed copy thereof is on file;

(2) A verified list of the names, residences, and post office addresses of its trustees;

(3) An affidavit setting forth its assumed business name, if any; and

(4) A foreign business trust shall deliver to the Secretary of State the location of its principal office, the name of its registered agent for service, and its irrevocable consent to service of process duly signed by a majority of its trustees to bind the business trust by such irrevocable consent.

(c) When a foreign business trust has complied with the delivery requirements as provided in this section, the Secretary of State, after determining that all requirements have been met, shall file the delivered documents of foreign business trusts and the foreign business trusts may thereupon commence business.

(d) Upon the filing of the form provided by the Secretary of State or the copy of articles, declaration of trust, or trust agreement and the payment of a filing fee in compliance with the laws of the State of Arkansas, the Secretary of State shall issue to the trustee named in the form or articles, declaration of trust, or trust agreement, a certificate showing that the declaration of trust has been on file in the office, whereupon such association shall be authorized to transact business in this state provided that all other applicable laws have been followed.

(e)(1) The articles, declaration of trust, or trust agreement by which any foreign business trust was created may be amended in the manner specified therein or in such manner as is valid under the law applicable to the foreign business trust.

(2) Provided, that no amendment shall be legally effected in the state until a copy thereof has been filed with the Secretary of State.

History. Acts 1999, No. 1366, § 2.

4-31-403. Applicability of law.

(a) Any foreign business trust shall be subject to such applicable provisions of law from time to time in effect with respect to foreign corporations doing business in Arkansas.

(b) These shall include, without limitation, applicable provisions of law as relate to the issuance of securities, filing the required statements or reports, service of process, general grants of power to act, withdrawal, right to sue and be sued, limitation of individual liability of shareholders, and rights to acquire, mortgage, sell, lease, operate, and otherwise deal in or with real and personal property.

History. Acts 1999, No. 1366, § 3.

4-31-404. Discontinuing trust business.

(a) Any foreign business trust that desires to withdraw from or discontinue doing trust business shall furnish to the Secretary of State satisfactory evidence of its release and discharge from all obligation undertaken by it and after the foreign business trust has furnished that evidence to the Secretary of State, the Secretary of State shall withdraw any authority to do a trust business previously issued to that foreign business trust, and thereafter the foreign business trust shall not be permitted to use and shall not undertake the administration of any trust business in the State of Arkansas.

(b) No person may transact or conduct business within the state under any articles, declaration of trust, or trust agreement without first complying with the provisions and requirements of this subchapter, and no person organized to do business under any articles, declaration of trust, or trust agreement may offer to sell, barter, or exchange any unit, share, contract, notes, bond, mortgage, oil or mineral lease, or other securities, without first having to comply with the provisions and requirements of this subchapter.

History. Acts 1999, No. 1366, § 4.

4-31-405. Merger or consolidation.

(a)(1) Pursuant to an agreement of merger or consolidation, a foreign business trust may merge or consolidate with or into one (1) or more foreign business trusts or other business entities formed or organized or existing under the laws of the state or any other state or the United States or any foreign country or other foreign jurisdiction, with the foreign business trust or other business entity, as the agreement shall provide, being the surviving or resulting business trust or other business entity unless otherwise provided in the governing instrument of a foreign business trust.

(2) A merger or consolidation shall be approved by each business trust which is to merge or consolidate by all of the trustees and the beneficial owners of the business trust.

(b)(1) If a business trust is merging or consolidating under this section, the business trust or other business entity surviving or resulting in or from the merger or consolidation shall file a certificate of merger or consolidation in the office of the Secretary of State.

(2) The certificate of merger or consolidation shall state:

(A) The name and jurisdiction of formation or organization of each of the business trusts or other business entities which are to merge or consolidate;

(B) That an agreement of merger or consolidation has been approved and executed by each of the business trusts or other business entities which are to merge or consolidate;

(C) The name of the surviving or resulting business trust or other business entity; and

(D)(i) The future effective date or time, which shall be a date or time certain, of the merger or consolidation if it is not to be effective upon the certificate of merger or consolidation.

(ii) The effective date can be no later than ninety (90) days after the filing of the original documents;

(E) That the executed agreement of merger or consolidation is on file at the principal place of business of the surviving or resulting business trust or other business entity and shall state the address thereof;

(F) That a copy of the agreement of merger or consolidation will be furnished by the surviving or resulting business trust or other business entity on request and without cost to any beneficial owner of any business trust or any person holding an interest in any other business entity which is to merge or consolidate; and

(G)(i) If the surviving or resulting entity is not a business trust or other business entity formed or organized or existing under the laws of the State of Arkansas, that the surviving or resulting other business entity agrees that it may be served with process in the state in any action, suit, or proceeding for the enforcement of any business trust which is to merge or consolidate, irrevocably appointing the Secretary of State as its agent to accept service of process in any action, suit, or proceeding and specifying the address to which a copy of the process shall be mailed to it by the Secretary of State.

(a) In the event of service under subdivision (b)(2)(G)(i) of this section upon the Secretary of State, the plaintiff in any such action, suit, or proceeding shall furnish the Secretary of State with the address specified in the certificate of merger or consolidation provided for in this section and any other address which the plaintiff may elect to furnish, together with copies of such process as required by the Secretary of State, and the Secretary of State shall notify the surviving or resulting other business entity thereof at all addresses furnished by the plaintiff by letter.

(b) The letter shall enclose a copy of the process and any other papers served upon the Secretary of State.

(c) It shall be the duty of the plaintiff in the event of service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being made pursuant to subdivision (b)(2)(G)(i) of this section, and to pay the Secretary of State the sum of twenty-five dollars (\$25.00) for use of the state, which sum shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein.

(c) Unless a future effective date or time is provided in a certificate of merger or consolidation, in which event a merger or consolidation shall be effective at any such future effective date or time, a merger or consolidation shall be effective upon the filing in the office of the Secretary of State of a certificate of merger or consolidation.

(d) A certificate of merger or consolidation shall act as a certificate of cancellation for a foreign business trust which is not the surviving or resulting entity in the merger or consolidation.

(e) When any merger or consolidation shall have become effective under this section, for all purposes of the laws of the state, all of the rights, privileges, and powers of each of the business trusts and other business entities that have merged or consolidated, and all property, real, personal, and mixed, and all debts due to any business trusts and other business entities, as well as all other things and causes of action belonging to each of the business trusts and other business entities, shall be vested in the surviving or resulting business trust or other business entity, and shall thereafter be the property of the surviving or resulting business trust or other business entity as they were of each of the business trusts and other business entities that have merged or consolidated, and the title to any real property vested by deed or otherwise, under the laws of the state, in any of the business trusts and other business entities, shall not revert or be in any way impaired by reason of this chapter, but all rights of creditors and all liens upon any property of any of the business trusts and other business entities shall be preserved unimpaired, and all debts, liabilities, and duties of each of the business trusts and other business entities that have merged or consolidated shall thenceforth attach to the surviving or resulting business trust or other business entity and may be enforced against it to the same extent as if debts, liabilities, and duties had been incurred or contracted by it.

History. Acts 1999, No. 1366, § 5.

4-31-406. Filing fees.

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to him or her for filing:

DOCUMENT	FEE
(1) Articles of business trust.....	\$300.00
(2) Business trust’s statement of change of registered agent or registered office or both.....	25.00
(3) Agent’s statement of resignation.....	No fee
(4) Amendment of articles of business trust.....	300.00
(5) Articles of merger.....	100.00
(6) Articles of dissolution.....	300.00
(7) Application for amended certificate of authority.....	300.00
(8) Application for certificate of withdrawal.....	300.00

(9) Any other document required or permitted to be filed by this subchapter..... 25.00

(b)(1) The Secretary of State shall collect a fee of twenty-five dollars (\$25.00) each time process is served on him or her under this subchapter.

(2) The party to a proceeding causing service of process is entitled to recover this fee as costs if he or she prevails in the proceeding.

(c) The Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign business trust:

(1) Fifty cents (\$ 0.50) a page for copying; and

(2) Five dollars (\$5.00) for the certificate.

History. Acts 1999, No. 1366, § 6.

CHAPTER 32

SMALL BUSINESS ENTITY TAX PASS THROUGH ACT

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. FORMATION.
- 3. RELATIONS OF MEMBERS AND MANAGERS TO PERSONS DEALING WITH THE LIMITED LIABILITY COMPANY.
- 4. RIGHTS AND DUTIES OF MEMBERS AND MANAGERS.
- 5. FINANCE.
- 6. DISTRIBUTIONS AND WITHDRAWAL.
- 7. OWNERSHIP AND TRANSFER OF PROPERTY.
- 8. ADMISSION AND WITHDRAWAL OF MEMBERS.
- 9. DISSOLUTION.
- 10. FOREIGN LIMITED LIABILITY COMPANIES.
- 11. SUITS BY AND AGAINST THE LIMITED LIABILITY COMPANY.
- 12. MERGER AND CONSOLIDATION.
- 13. MISCELLANEOUS.
- 14. MEDICAL OR DENTAL LIMITED LIABILITY COMPANY.

A.C.R.C. Notes. References to “this chapter” in subchapters 1-13 may not apply to subchapter 14 which was enacted subsequently.

References to “this chapter” in §§ 4-32-101 through 4-32-108 and subchapters 2-14 may not apply to § 4-32-109 which was enacted subsequently.

Effective Dates. Acts 1993, No. 1003, § 1318: April 12, 1993. Emergency clause

provided: “It is hereby found and determined by the Seventy-Ninth General Assembly that there is a public need for adoption of this Act, and that the immediate passage of this Act is necessary. Therefore, an emergency is hereby declared to exist and this Act shall be in full force and effect from and after its passage and approval.”

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SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

4-32-101. Title.

4-32-102. Definitions.

4-32-103. Name.

4-32-104. Reservation of name.

4-32-105. Registered office, registered agent, and service of process.

SECTION.

4-32-106. Nature of business — Powers.

4-32-107. Service of process.

4-32-108. Use of fictitious names.

4-32-109. Registered name.

Effective Dates. Acts 1997, No. 479, § 16: March 13, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the limited liability company statute and other acts relating to pass through entities and related laws need amending in order to better reflect the intent and operation of those laws as originally drafted and to be consistent with current trends. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto. Notwithstanding the foregoing, SECTION 10 of this act (§ 4-32-802(c)) shall only apply to limited liability companies in existence [sic] on the effective date of this act in the event an election is made with the Secretary of State to have this provision apply; otherwise, the original § 4-32-802(c) shall apply to limited liability companies existing on the effective date of this act."

Acts 1999, No. 1528, § 13: Apr. 15, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that the Small Business Entity Tax Pass Through Act and the Revised Limited Partnership Act of 1991 and other related acts and related laws need amending in order to better reflect the intent and operation of those laws. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto. Notwithstanding the foregoing, Section 4 of this act shall only apply to limited liability companies in existence on the effective date of this act in the event an election is made with the Secretary of State to have this provision apply; otherwise, the original § 4-32-802, as amended, shall apply to limited liability companies existing on the effective date of this act."

4-32-101. Title.

This chapter shall be known and may be cited as the "Small Business Entity Tax Pass Through Act".

History. Acts 1993, No. 1003, § 101.

4-32-102. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Articles of organization" means articles filed under § 4-32-201, and those articles as amended and restated;

(2) "Corporation" means a corporation formed under the laws of any state or foreign country, including professional corporations or associations;

(3) "Court" includes every court having jurisdiction in the case;

(4) "Event of dissociation" means an event that causes a person to cease to be a member as provided in § 4-32-802;

(5) "Foreign limited liability company" means an organization that is:

(A) An unincorporated association;

(B) Organized under laws of a state other than the laws of this state, or under the laws of any foreign country;

(C) Organized under a statute pursuant to which an association may be formed that affords to each of its members limited liability with respect to the liabilities of the entity; and

(D) Not required to be registered or organized under any statute of this state other than this chapter;

(6) "Limited liability company" or "domestic limited liability company" means an organization formed under this chapter;

(7) "Limited liability company interest" or "interest in the limited liability company" means the interest that can be assigned under § 4-32-704 and charged under § 4-32-705;

(8) "Limited partnership" means a limited partnership formed under the laws of any state or foreign country;

(9) "Manager" or "managers" means, with respect to a limited liability company that has set forth in its articles of organization that it is to be managed by managers, the person or persons designated in accordance with § 4-32-401;

(10) "Member" or "members" means a person or persons who have been admitted to membership in a limited liability company as provided in § 4-32-801 and who have not ceased to be members as provided in § 4-32-802;

(11) "Operating agreement" means the written agreement which shall be entered into among all of the members as to the conduct of the business and affairs of a limited liability company;

(12) "Person" means an individual, a general partnership, a limited partnership, a domestic or foreign limited liability company, a trust, an estate, an association, a corporation, a custodian, a nominee and other

individual entity in its own or representative capacity, or any other legal entity;

(13) “Professional service” means any type of professional service which may be legally performed only pursuant to a license or other legally mandated personal authorization. For example: the personal service rendered by certified public accountants, architects, engineers, dentists, doctors and attorneys at law; and

(14) “State” means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

History. Acts 1993, No. 1003, § 102.

RESEARCH REFERENCES

Ark. L. Rev. Matthews, The Arkansas Limited Liability Company: A New Business Entity is Born, 46 Ark. L. Rev. 791.

4-32-103. Name.

(a) The name of each limited liability company as set forth in its articles of organization must contain the words “Limited Liability Company” or “Limited Company” or the abbreviations “L.L.C.,” “L.C.,” “LLC,” or “LC.” The word “Limited” may be abbreviated as “Ltd.” and the word “Company” may be abbreviated as “Co.”

(b) A limited liability company name must be distinguishable upon the records of the Secretary of State from:

(1) The name of any limited liability company, limited partnership, or corporation existing under the laws of this state or authorized to transact business in this state; or

(2) Any name reserved under § 4-32-104.

(c) The provisions of subsection (b) of this section shall not apply if the applicant files with the Secretary of State a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of the name in this state.

(d) The name of a limited liability company which performs professional service shall in addition contain the words “Professional Limited Liability Company” or “Professional Limited Company” or the abbreviations “P.L.L.C.,” “P.L.C.,” “PLLC,” “PLC,” and the words “Limited” and “Company” may be abbreviated as “Ltd.” or “Co.” and may not contain the name of any person who is not a member, except that the name of a former member or member of a predecessor organization may continue to be included in the name.

History. Acts 1993, No. 1003, § 103; 1997, No. 479, §§ 1, 11; 1999, No. 1528, § 8.

Amendments. The 1997 amendment substituted “name must be distinguishable upon the records of the Secretary of

State from” for “name may not be the same or deceptively similar to” and substituted “must” for “may not” in (b); deleted “either of the following” from the end of (c); and deleted (c)(1); and the (c)(2) designation.

The 1999 amendment deleted "deceased" preceding "former member" and "member" in (d).

4-32-104. Reservation of name.

- (a) The exclusive right to use a name may be reserved by:
 - (1) Any person intending to organize a limited liability company and to adopt that name;
 - (2) Any limited liability company or any foreign limited liability company registered in this state that intends to adopt that name;
 - (3) Any foreign limited liability company intending to register in this state and to adopt that name; or
 - (4) Any person intending to organize a foreign limited liability company and to have it registered in this state and to adopt that name.
- (b) The reservation shall be made by filing with the Secretary of State an application, executed by the applicant, to reserve a specified name. If the Secretary of State finds that the name is available for use by a domestic or foreign limited liability company, the Secretary of State shall reserve the name of the exclusive use of the applicant for a period of one hundred twenty (120) days from and after the date the application is filed with the Secretary of State.
- (c) The holder of a reserved limited liability company name may renew the reservation for two (2) successive periods of one hundred twenty (120) days each from the date of the first renewal.
- (d) The right to the exclusive use of a reserved name may be transferred to another person by filing with the Secretary of State a notice of the transfer, executed by the applicant for whom the name was reserved, and specifying the name to be transferred and the name and address of the transferee. The transfer shall not extend the term during which the name is reserved.

History. Acts 1993, No. 1003, § 104.

4-32-105. Registered office, registered agent, and service of process.

- (a)(1) A limited liability company shall continuously maintain in this state:
 - (A) A registered office that may, but need not, be the same as its place of business; and
 - (B) A registered agent for service of process on the limited liability company that is an individual resident of this state, a limited liability company, a foreign limited liability company authorized to transact business in this state, or a corporation formed under the laws of or authorized to transact business in this state.
- (2) A copy of the operating agreement shall be maintained at the registered office at all times.
- (b) Unless the registered agent signed the document making the appointment, the appointment of a registered agent or a successor registered agent on whom process may be served is not effective until

the agent delivers a statement in writing to the Secretary of State accepting the appointment.

(c) A limited liability company may change its registered office or registered agent, or both, by delivering to the Secretary of State a statement setting forth:

- (1) The name of the limited liability company;
- (2) The address of its current registered office;
- (3) If the address of its registered office is to be changed, the address to which the registered office is to be changed;
- (4) The name and address of its current registered agent; and
- (5) If its registered agent or the registered agent's address is to be changed, the name and address of its successor registered agent or the registered agent's new address.

(d) The change of address of the registered office or registered agent is effective on delivery of the statement to the Secretary of State. The appointment of a new registered agent is effective on delivery of the statement to the Secretary of State and on receipt by the Secretary of State of evidence that the new registered agent has accepted appointment pursuant to subsection (b) of this section.

(e) A registered agent of a limited liability company may resign as registered agent by delivering a written notice of resignation, executed in duplicate, to the Secretary of State. The Secretary of State shall mail a copy of the notice to the limited liability company at its registered office. The appointment of the registered agent terminates thirty (30) days after receipt of the notice by the Secretary of State or on the appointment of a successor registered agent, whichever occurs first.

(f) If a registered agent changes its address to another place in this state, it may change the address by delivering a statement to the Secretary of State as required by subsection (c) of this section, except that the statement need be signed only by the registered agent. The statement shall recite that a copy of it has been mailed to the limited liability company.

History. Acts 1993, No. 1003, § 105.

4-32-106. Nature of business — Powers.

(a) A limited liability company may be organized under this chapter for any lawful purpose, including the performance of professional services and related activities. If the purpose for which a limited liability company is organized or its activities make it subject to a special provision of law, the limited liability company shall also comply with that provision.

(b) A limited liability company shall possess and may exercise all powers and privileges granted by this chapter or by any other law or by its operating agreement, together with any powers incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct, promotion, or attainment of the business, purposes, or activities of the limited liability company.

History. Acts 1993, No. 1003, § 106.

4-32-107. Service of process.

(a) Service of legal process, notice, or demand required or permitted by law to be served upon any domestic or foreign limited liability company shall be made on the registered agent of the domestic or foreign limited liability company in the State of Arkansas, as provided by law.

(b) In cases where legal process cannot by due diligence serve the process in any manner provided for by subsection (a) of this section, it shall be lawful to serve the process against a domestic or foreign limited liability company upon the Secretary of State, and such service shall be as effectual for all intents and purposes as if made in any of the ways provided for in subsection (a) of this section. In the event that service is effected through the Secretary of State in accordance with this subsection, the Secretary of State shall forthwith notify the domestic or foreign limited liability company by letter, certified mail, return receipt requested, directed to the domestic or foreign limited liability company at its address as it appears on the records relating to such limited liability company on file with the Secretary of State or, if no such address appears, at its last registered office. Such letter shall enclose a copy of the process and any other papers served on the Secretary of State pursuant to this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being effected pursuant to this subsection, and to pay the Secretary of State the sum of twenty-five dollars (\$25.00) for the use of the State of Arkansas, which sum shall be taxed as part of the costs in the proceeding if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and defendant, the title, docket number and nature of the proceeding in which process has been served upon him or her, the fact that service has been effected pursuant to this subsection, the return date thereof, and the day and hour when the service was made. The Secretary of State shall not be required to retain such information for a period longer than five (5) years from his or her receipt of the service of process.

(c) Nothing contained in this section limits or affects the rights to serve process in any other manner now or hereafter provided by law. These provisions are an extension of and not a limitation upon rights otherwise existing for service of legal process upon nonresidents.

History. Acts 1993, No. 1003, § 107.

4-32-108. Use of fictitious names.

(a) No limited liability company, domestic or foreign, shall conduct any business in this state under a fictitious name unless it first files

with the Secretary of State a form supplied or approved by the Secretary of State giving the following information:

(1) The fictitious name under which business is being or will be conducted by the applicant limited liability company;

(2) A brief statement of the character of business to be conducted under the fictitious name; and

(3) The name of the limited liability company, the state of organization, and location, giving the city and street address, of the registered office in the state of the applicant limited liability company.

(b) Each such form shall be executed, without verification, in duplicate and filed with the Secretary of State. The Secretary of State shall retain one (1) counterpart; and the other counterpart, bearing the file marks of the Secretary of State, shall be returned to the limited liability company. However, the Secretary of State shall not accept such filing if the proposed fictitious name is the same as, or confusingly similar to, the name of any domestic corporation, limited liability company, limited partnership, limited liability partnership or any other entity registered with the Secretary of State, or any foreign entity authorized to do business in the state or any name reserved or registered under §§ 4-27-402, 4-27-403, 4-32-104 or 4-43-103.

(c) Copies of such filed forms, certified by the respective filing officers, shall be admitted in evidence where the question of filing may be material.

(d) If, after a filing under this section, the applicant limited liability company is dissolved, or, being a foreign limited liability company, surrenders or forfeits its rights to do business in Arkansas or, whether a domestic or foreign limited liability company, ceases to do business in Arkansas under the specified fictitious name, such limited liability company shall be obligated to file with the Secretary of State a cancellation of its privilege hereunder. If such cancellation is not filed, the Secretary of State, upon satisfactory evidence, may cancel such privilege.

(e) If a limited liability company which has not filed under this section has heretofore or shall hereafter become a party to any contract, deed, conveyance, assignment, or instrument of encumbrance in which such limited liability company is referred to exclusively by a fictitious name, the obligations imposed upon the limited liability company under said instrument and the right sought to be conferred upon third parties thereunder may be enforced against it, but the rights accruing to the limited liability company under said instrument may not be enforced by the limited liability company in the courts of this state until it complies with this section and pays to the Treasurer of State a civil penalty of three hundred dollars (\$300), and in any suit by a limited liability company upon an instrument which identified it exclusively by a fictitious name, the limited liability company shall be required to allege compliance with this section.

(f)(1) Compliance with this section does not give a limited liability company an exclusive right to the use of the fictitious name, and the

registration of a fictitious name under this section will not bar the use of the same name as the name of any domestic entity or any foreign entity authorized to do business in this state, but this chapter is not intended to bar any aggrieved party in such a situation from applying for equitable relief under principles of fair trade law.

History. Acts 1999, No. 1528, § 1.

Publisher's Notes. Acts 1999, No. 1528, § 9, provided: "The fictitious name provisions for limited liability companies, limited partnerships, and limited liability partnerships in Sections 1, 3 and 5 of this

act [codified as §§ 4-32-108, 4-43-108, 4-42-707] shall not be applicable to any name for which an assumed name filing has been made under § 4-70-203 prior to the effective date of this act."

4-32-109. Registered name.

(a) A foreign limited liability company may register its name, if the name is distinguishable upon the records of the Secretary of State from the names of any limited liability company, limited partnership, partnership, or corporation existing under the laws of this state or authorized to transact business in this state.

(b) A foreign limited liability company registers its name by delivering it to the Secretary of State for filing an application:

(1) Setting forth its name, or its name with any addition required by § 4-32-103, the state or country and date of its formation, and a brief description of the nature of the business in which it is engaged; and

(2) Accompanied by a certificate of existence or a document of similar import from the state or country in which it was formed.

(c) The name is registered for the applicant's exclusive use upon the effective date of the application.

(d)(1) A foreign limited liability company whose registration is effective may renew the registration for successive years by delivering to the Secretary of State for filing a renewal application, which complies with the requirements of subsection (b) of this section, between October 1 and December 31 of the preceding year.

(2) The renewal application when filed renews the registration for the following calendar year.

(e)(1) A foreign limited liability company whose registration is effective may thereafter qualify as a foreign limited liability company under the registered name or consent in writing to the use of that name by a limited liability company thereafter incorporated under § 4-32-101 et seq. or by another foreign limited liability company thereafter authorized to transact business in this state.

(2) The registration terminates when the domestic limited liability company is incorporated or the foreign limited liability company qualifies or consents to the qualification of another foreign limited liability company under the registered name.

History. Acts 2001, No. 830, § 1.

A.C.R.C. Notes. References to "this chapter" in §§ 4-32-101 through 4-32-108

and subchapters 2-14 may not apply to this section which was enacted subsequently.

SUBCHAPTER 2 — FORMATION

SECTION.	SECTION.
4-32-201. Formation.	4-32-205. Filing with the Secretary of State.
4-32-202. Articles of organization.	4-32-206. Effect of delivery or filing of articles of organization.
4-32-203. Amendment of articles of organization — Restatement.	
4-32-204. Execution of documents.	

RESEARCH REFERENCES

Am. Jur. 59A Am. Jur. 2d, Partn., §§ 1249-1278.	C.J.S. 68 C.J.S., Partn., §§ 406-414, 419-421.
Ark. L. Notes. Beard, The Small Business Tax Entity Pass Through Act—The Birth of a Duck, 1993 Ark. L. Notes 15.	

4-32-201. Formation.

One (1) or more persons may form a limited liability company by signing or causing to be signed articles of organization and delivering the signed articles to the Secretary of State for filing. The person or persons who sign the articles of organization causing the formation of a limited liability company need not be members of the limited liability company at the time of formation or after formation has occurred.

History. Acts 1993, No. 1003, § 201.

4-32-202. Articles of organization.

The articles of organization shall set forth:

- (1) A name for the limited liability company that satisfies the requirements of § 4-32-103;
- (2) The address of the registered office and the name and business residence, or mailing address of the registered agent required to be maintained by § 4-32-105; and
- (3) If management of the limited liability company is vested in a manager or managers, a statement to that effect.

History. Acts 1993, No. 1003, § 202; 2001, No. 829, § 1.	deleted former (3); redesignated the former (4) as present (3); and made related changes.
Amendments. The 2001 amendment	

4-32-203. Amendment of articles of organization — Restatement.

- (a) The articles of organization of a limited liability company may be amended by filing articles of amendment with the Secretary of State. The articles of amendment shall set forth:
- (1) The name of the limited liability company;

(2) The date the articles of organization were filed; and

(3) The amendment to the articles of organization.

(b) The articles of organization may be amended in any respects as may be desired, so long as the articles of organization as amended contain only provisions that may be lawfully contained in articles of organization at the time of making the amendment.

(c) Articles of organization may be restated at any time. Restated articles of organization shall be filed with the Secretary of State and shall be specifically designated as such in the heading and shall state either in the heading or in an introductory paragraph the limited liability company's present name and, if it has been changed, all of its former names and the date of the filing of its articles of organization.

History. Acts 1993, No. 1003, § 204.

4-32-204. Execution of documents.

(a) Unless otherwise provided in any other section of this chapter, any document required by this chapter to be filed with the Secretary of State shall be executed:

(1) By any manager if management of the limited liability company is vested in one (1) or more managers;

(2) By any member if management of the limited liability company is reserved to the members;

(3) If the limited liability company has not been formed, by the person or persons forming the limited liability company; or

(4) If the limited liability company is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(b) The person executing the document shall sign it and state beneath or opposite his or her signature the person's name and the capacity in which he or she signs.

(c) The person executing the document may do so as an attorney-in-fact. Powers of attorney relating to the execution of the document need not be provided to or filed with the Secretary of State.

History. Acts 1993, No. 1003, § 310.

4-32-205. Filing with the Secretary of State.

(a) The original signed copy, together with a duplicate copy that may be either a signed, photocopied, or conformed copy of the articles of organization or any other document required to be filed pursuant to this chapter, shall be delivered to the Secretary of State. If the Secretary of State determines that the documents conform to the filing provisions of this chapter, it shall, when all required filing fees have been paid:

(1) Endorse on each signed original and duplicate copy the word "filed" and the date and time of the document's acceptance for filing;

(2) Retain the signed original in the Secretary of State's files; and

(3) Return the duplicate copy to the person who filed it or the person's representative.

(b) If at the time any documents are delivered for filing, the Secretary of State is unable to make the determination required for filing by subsection (a) of this section, the documents are deemed to have been filed at the time of delivery if the Secretary of State subsequently determines that:

(1) The documents as delivered conform to the filing provisions of this chapter; or

(2) The documents have been brought into conformance within twenty (20) days after notification of nonconformance is given by the Secretary of State to the person who delivered the documents for filing or the person’s representative.

(c) If the filing and determination requirements of this chapter are not satisfied within the time prescribed in subdivision (b)(2) of this section, the documents shall not be filed.

History. Acts 1993, No. 1003, § 311.

4-32-206. Effect of delivery or filing of articles of organization.

(a) Unless a delayed effective date is recited in the articles of organization, a limited liability company is formed when the articles of organization are delivered to the Secretary of State for filing, even if the Secretary of State is unable at the time of delivery to make the determination required for filing by § 4-32-1308. If the articles of organization, as delivered to the Secretary of State, do not conform to the filing provisions of this chapter and are not brought into conformance within the time period prescribed by § 4-32-1308, the existence of the limited liability company terminates at the end of such time period.

(b) Each copy of the articles of organization stamped “filed” and marked with the filing date is conclusive evidence that all conditions precedent required to be performed by the organizers have been complied with and that the limited liability company has been legally organized and formed under this chapter.

History. Acts 1993, No. 1003, § 203.

**SUBCHAPTER 3 — RELATIONS OF MEMBERS AND MANAGERS TO PERSONS
DEALING WITH THE LIMITED LIABILITY COMPANY**

SECTION.	SECTION.
4-32-301. Agency power of members and managers.	4-32-306. Limited liability company may render professional service — Nonprofessional employees and agents — Members and managers need not be employees, etc.
4-32-302. Admissions by members and managers.	
4-32-303. Limited liability company charged with knowledge of or notice to member or manager.	4-32-307. Limited liability company may qualify as executor or administrator, or in other fiduciary capacity.
4-32-304. Liability of members to third parties.	
4-32-305. Parties to actions.	

SECTION.

4-32-308. Professional relationship —
Personal liability.

SECTION.

4-32-309. Liability of limited liability
company to third parties.

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of Business Enterprise?, 1995 Ark. L. Notes 57.

Goforth, An Update on Arkansas Limited Liability Companies: New Tax Regulations and New State Laws, 1997 Ark. L. Notes 11.

C.J.S. 68 C.J.S., Partn., §§ 429-436.

4-32-301. Agency power of members and managers.

(a) Except as provided in subsection (b) of this section, every member is an agent of the limited liability company for the purpose of its business or affairs, and the act of any member, including, but not limited to, the execution in the name of the limited liability company of any instrument, for apparently carrying on in the usual way the business or affairs of the limited liability company of which he or she is a member, binds the limited liability company, unless the member so acting has, in fact, no authority to act for the limited liability company in the particular matter, and the person with whom the member is dealing has knowledge of the fact that the member has no such authority.

(b) If the articles of organization provide that management of the limited liability company is vested in a manager or managers:

(1) No member solely by reason of being a member is an agent of the limited liability company; and

(2) Every manager is an agent of the limited liability company for the purpose of its business or affairs, and the act of any manager, including, but not limited to, the execution in the name of the limited liability company of any instrument, for apparently carrying on in the usual way the business or affairs of the limited liability company of which he is a manager binds the limited liability company, unless the manager so acting has, in fact, no authority to act for the limited liability company in the particular matter, and the person with whom the manager is dealing has knowledge of the fact that the manager has no such authority.

(c) An act of a manager or a member which is not apparently for the carrying on in the usual way the business or affairs of the limited liability company does not bind the limited liability company unless authorized in accordance with an operating agreement, at the time of the transaction or at any other time.

(d) No act of a manager or member in contravention of a restriction on authority shall bind the limited liability company to persons having knowledge of the restriction.

History. Acts 1993, No. 1003, § 301.

4-32-302. Admissions by members and managers.

(a) Except as provided in subsection (b) of this section, an admission or representation made by any member concerning the business or affairs of a limited liability company within the scope of his or her authority as provided for by this chapter is evidence against the limited liability company.

(b) If the articles of organization provide that management of the limited liability company is vested in a manager or managers:

(1) An admission or representation made by a manager concerning the business or affairs of a limited liability company within the scope of the manager's authority as provided for by this chapter is evidence against the limited liability company; and

(2) The admission or representation of any member, acting solely in the capacity of a member, shall not constitute evidence against the limited liability company.

History. Acts 1993, No. 1003, § 302.

4-32-303. Limited liability company charged with knowledge of or notice to member or manager.

(a) Except as provided in subsection (b) of this section, notice to any member of any matter relating to the business or affairs of the limited liability company, and the knowledge of the member acting in the particular matter, acquired while a member or known at the time of becoming a member, and the knowledge of any other member who reasonably could and should have communicated the knowledge to the acting member, operate as notice to or knowledge of the limited liability company, except in the case of a fraud on the limited liability company committed by or with the consent of that member.

(b) If the articles of organization provide that management of the limited liability company is vested in a manager or managers:

(1) Notice to any manager of any matter relating to the business or affairs of the limited liability company, and the knowledge of the manager acting in the particular matter, acquired while a manager or known at the time of becoming a manager, and the knowledge of any other manager who reasonably could and should have communicated the knowledge to the acting manager, operate as notice to or knowledge

of the limited liability company, except in the case of a fraud on the limited liability company committed by or with the consent of that manager; and

(2) Notice to or knowledge of any member of a limited liability company while the member is acting solely in the capacity of a member is not notice to or knowledge of the limited liability company.

History. Acts 1993, No. 1003, § 303.

4-32-304. Liability of members to third parties.

Except for the personal liability for acts or omissions of those providing professional service as set forth in § 4-32-308, a person who is a member, manager, agent or employee of a limited liability company is not liable for a debt, obligation, or liability of the limited liability company, whether arising in contract, tort, or otherwise or for the acts or omissions of any other member, manager, agent, or employee of the limited liability company.

History. Acts 1993, No. 1003, § 304.

4-32-305. Parties to actions.

A member of a limited liability company is not a proper party to a proceeding by or against a limited liability company, by reason of being a member of the limited liability company, except where the object of the proceeding is to enforce a member's right against or liability to the limited liability company or as otherwise provided in an operating agreement.

History. Acts 1993, No. 1003, § 305.

4-32-306. Limited liability company may render professional service — Nonprofessional employees and agents — Members and managers need not be employees, etc.

No limited liability company organized under this chapter may render professional service within this state except through its members, employees of its members, managers, employees and agents who are duly licensed or otherwise legally authorized to render those professional services. However, this provision shall not be interpreted to preclude clerks, secretaries, bookkeepers, technicians, and other assistants who are not usually and ordinarily considered by custom and practice to be rendering professional service to the public for which a license or other legal authorization is required from acting as employees, managers, or agents of a professional limited liability company.

History. Acts 1993, No. 1003, § 306.

4-32-307. Limited liability company may qualify as executor or administrator, or in other fiduciary capacity.

A limited liability company engaged in the practice of law, as a part of the practice of law, may act as an executor, trustee, or administrator of an estate, guardian for an infant, or in any other fiduciary capacity. Any member, employee of a member, manager, employee, or agent of a limited liability company engaged in the practice of law who is duly licensed as an attorney in this state may perform necessary fiduciary responsibilities on behalf of the limited liability company.

History. Acts 1993, No. 1003, § 307.

4-32-308. Professional relationship — Personal liability.

All individuals rendering professional service may be personally liable for any results of that individual's acts or omissions. No member, employee of a member, manager, or employee of a limited liability company shall be personally liable for the acts or omission of any other member, employee of a member, manager, or employee of the limited liability company.

History. Acts 1993, No. 1003, § 308.

4-32-309. Liability of limited liability company to third parties.

Notwithstanding the limitations on liability contained in this subchapter for members and managers, a limited liability company shall be liable to third parties for its valid obligations.

History. Acts 1993, No. 1003, § 309.

SUBCHAPTER 4 — RIGHTS AND DUTIES OF MEMBERS AND MANAGERS**SECTION.**

4-32-401. Management.

4-32-402. Duties of managers and members.

4-32-403. Voting.

SECTION.

4-32-404. Limitation of liability and indemnification of members and managers.

4-32-405. Records and information.

Effective Dates. Acts 1997, No. 479, § 16: March 13, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the limited liability company statute and other acts relating to pass through entities and related laws need amending in order to better reflect the intent and operation of those laws as originally drafted and to be consistent with current trends. Therefore an emergency is declared to exist and this act

being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto. Notwithstanding the foregoing,

SECTION 10 of this act (§ 4-32-802(c)) shall only apply to limited liability companies in existence [sic] on the effective date of this act in the event an election is made with the Secretary of State to have this provision apply; otherwise, the original § 4-32-802(c) shall apply to limited liability companies existing on the effective date of this act.”

RESEARCH REFERENCES

Am. Jur. 59A Am. Jur. 2d, Partn., §§ 1320-1373.

Ark. L. Notes. Beard, The Small Business Tax Entity Pass Through Act—The Birth of a Duck, 1993 Ark. L. Notes 15.

Goforth, The Arkansas Limited Liability Company: A Call for Clarification, 1994 Ark. L. Notes 19.

C.J.S. 68 C.J.S., Partn., §§ 422-427.

4-32-401. Management.

- (a) With respect to persons other than members, management of the affairs of the limited liability company shall be governed by § 4-32-301.
- (b) Unless otherwise provided in an operating agreement, with respect to members, management of the affairs of the limited liability company shall be governed by § 4-32-301.
- (c) Unless otherwise provided in an operating agreement, managers:
- (1) Shall be designated, appointed, elected, removed, or replaced by a vote, approval, or consent of more than one-half (½) by number of the members;

(2) Need not be members of the limited liability company or natural persons; and

(3) Unless they are sooner removed or sooner resign, shall hold office until their successors shall have been elected and qualified.

History. Acts 1993, No. 1003, § 401; 1997, No. 479, § 6.

Amendments. The 1997 amendment

added (a); redesignated former (a) and (b) as present (b) and (c); and rewrote present (b).

RESEARCH REFERENCES

Ark. L. Notes. Goforth, An Update on Arkansas Limited Liability Companies:

New Tax Regulations and New State Laws, 1997 Ark. L. Notes 11.

4-32-402. Duties of managers and members.

- Unless otherwise provided in an operating agreement:
- (1) A member or manager shall not be liable, responsible, or accountable in damages or otherwise to the limited liability company or to the members of the limited liability company for any action taken or failure to act on behalf of the limited liability company unless the act or omission constitutes gross negligence or willful misconduct;

(2) Every member and manager must account to the limited liability company and hold as trustee for it any profit or benefit derived by that person without the consent of more than one-half (½) by number of the disinterested managers or members, or other persons participating in

the management of the business or affairs of the limited liability company, from any transaction connected with the conduct or winding up of the limited liability company or any use by the member or manager of its property, including, but not limited to, confidential or proprietary information of the limited liability company or other matters entrusted to the person as a result of his or her status as manager or member; and

(3) One who is a member of a limited liability company in which management is vested in managers under § 4-32-401 and who is not a manager shall have no duties to the limited liability company or to the other members solely by reason of acting in the capacity of a member.

History. Acts 1993, No. 1003, § 402.

4-32-403. Voting.

(a) Unless otherwise provided in an operating agreement or this chapter, and subject to subsection (b) of this section, the affirmative vote, approval or consent of more than one-half ($\frac{1}{2}$) by number of the members, if management of the limited liability company is vested in the members, or of the managers if the management of the limited liability company is vested in managers, shall be required to decide any matter connected with the business of the limited liability company.

(b) Unless otherwise provided in writing in an operating agreement, the affirmative vote, approval, or consent of all members shall be required to:

(1) Amend a written operating agreement; or

(2) Authorize a manager or member to do any act on behalf of the limited liability company that contravenes a written operating agreement, including any written provision thereof which expressly limits the purpose, business, or affairs of the limited liability company or the conduct thereof.

History. Acts 1993, No. 1003, § 403.

4-32-404. Limitation of liability and indemnification of members and managers.

An operating agreement which is in writing may:

(1) Eliminate or limit the personal liability of a member or manager for monetary damages for breach of any duty provided for in § 4-32-402; and

(2) Provide for indemnification of a member or manager for judgments, settlements, penalties, fines, or expenses incurred in a proceeding to which a person is a party because the person is or was a member or manager.

History. Acts 1993, No. 1003, § 404.

4-32-405. Records and information.

(a) Unless otherwise provided in writing in an operating agreement, a limited liability company shall keep at its principal place of business the following:

(1) A current and a past list, setting forth the full name and last known mailing address of each member and manager, if any, set forth in alphabetical order;

(2) A copy of the articles of organization and all amendments thereto, together with executed copies of any powers of attorney pursuant to which the articles of amendment have been executed;

(3) Copies of the limited liability company's federal, state, and local income tax returns and financial statements, if any, for the three (3) most recent years or, if those returns and statements were not prepared for any reason, copies of the information and statements provided to, or which should have been provided to, the members to enable them to prepare their federal, state, and local tax returns for the period;

(4) Copies of any effective written operating agreements, and all amendments thereto, and copies of any written operating agreements no longer in effect; and

(5) Unless contained in writing in an operating agreement:

(A) A writing, if any, setting forth the amount of cash and a statement of the agreed value of other property or services contributed by each member and the times at which or events upon the happening of which any additional contributions are to be made by each member;

(B) A writing, if any, stating events upon the happening of which the limited liability company is to be dissolved and its affairs wound up; and

(C) Other writings, if any, prepared pursuant to a requirement in an operating agreement.

(b) Upon reasonable request, a member may, at the member's own expense, inspect and copy during ordinary business hours any limited liability company record, wherever the record is located.

(c) Members, if the management of the limited liability company is vested in the members, or managers, if management of the limited liability company is vested in managers, shall render, to the extent the circumstances render it just and reasonable, true and full information of all things affecting the members to any member and to the legal representative of any deceased member or of any member under legal disability.

(d) Failure of the limited liability company to keep or maintain any of the records or information required pursuant to this section shall not be grounds for imposing liability on any member or manager for the debts and obligations of the limited liability company.

History. Acts 1993, No. 1003, § 405.

SUBCHAPTER 5 — FINANCE

SECTION.

4-32-501. Contributions to capital.

4-32-502. Liability for contributions.

SECTION.

4-32-503. Sharing of profits.

4-32-501. Contributions to capital.

A limited liability company interest may be issued in exchange for property, services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

History. Acts 1993, No. 1003, § 501.

4-32-502. Liability for contributions.

(a) A promise by a member to contribute to the limited liability company is not enforceable unless set forth in a writing signed by the member.

(b) Unless otherwise provided in an operating agreement, a member is obligated to the limited liability company to perform any enforceable promise to contribute cash or property or to perform services, even if the member is unable to perform because of death, disability, or other reason.

(c) If a member does not make the required contribution of property or services, the member is obligated, at the option of the limited liability company, to contribute cash equal to that portion of value of the stated contribution that has not been made.

(d) Unless otherwise provided in an operating agreement, the obligation of a member to make a contribution may be compromised only with the unanimous consent of the members.

(e) Only a creditor of a limited liability company who extends credit in reliance on an obligation to contribute or otherwise acts in reliance on that obligation to contribute after the member signs a writing which reflects the obligation to contribute pursuant to subsection (d) of this section may enforce any obligation to contribute.

History. Acts 1993, No. 1003, § 502.

4-32-503. Sharing of profits.

Unless otherwise provided in writing in an operating agreement, each member shall be repaid that member's contributions to capital and share equally in the profits and assets remaining after all liabilities, including those to members, are satisfied.

History. Acts 1993, No. 1003, § 503.

SUBCHAPTER 6 — DISTRIBUTIONS AND WITHDRAWAL

SECTION.

4-32-601. Sharing of interim distributions.

4-32-602. Distributions on an event of dissociation.

SECTION.

4-32-603. Distribution in kind.

4-32-604. Right to distribution.

RESEARCH REFERENCES

Am. Jur. 59A Am. Jur. 2d, Partn.,
§§ 1314-1319.

4-32-601. Sharing of interim distributions.

Except as otherwise provided in §§ 4-32-602 and 4-32-905, distributions of cash or other assets of a limited liability company shall be shared among the members and among classes of members in the manner provided in writing in an operating agreement. If an operating agreement does not so provide in writing, each member shall share equally in any distribution. A member is entitled to receive distributions described in this section from a limited liability company to the extent and at the times or upon the happening of the events specified in an operating agreement or at the times determined by the members or managers pursuant to § 4-32-403.

History. Acts 1993, No. 1003, § 601.

4-32-602. Distributions on an event of dissociation.

Upon the occurrence of an event of dissociation under § 4-32-802 which does not cause dissolution, other than an event of dissociation described in § 4-32-802(a)(3)(B), a dissociating member is entitled to receive any distribution which the member was entitled to receive prior to the event of dissociation. If an operating agreement does not provide the amount of or a method for determining the distribution to a dissociating member, the member shall receive within a reasonable time after dissociation the fair value of the member's interest in the limited liability company as of the date of dissociation based upon the member's right to share in distributions from the limited liability company.

History. Acts 1993, No. 1003, § 602.

4-32-603. Distribution in kind.

Unless otherwise provided in an operating agreement:

(1) A member, regardless of the nature of the member's contribution, has no right to demand and receive any distribution from the limited liability company in any form other than cash; and

(2) A member may not be compelled to accept from the limited liability company a distribution of any asset in kind to the extent that the percentage of the asset distributed to the member exceeds the percentage that the member would have shared in a cash distribution equal to the value of the property at the time of distribution.

History. Acts 1993, No. 1003, § 603.

4-32-604. Right to distribution.

At the time a member becomes entitled to receive a distribution, the member has the status of and is entitled to all remedies available to a creditor of the limited liability company with respect to that distribution.

History. Acts 1993, No. 1003, § 604.

SUBCHAPTER 7 — OWNERSHIP AND TRANSFER OF PROPERTY

SECTION.

4-32-701. Ownership of limited liability company property.

4-32-702. Transfer of real property.

4-32-703. Nature of limited liability company interest.

4-32-704. Assignment of interest.

SECTION.

4-32-705. Rights of judgment creditor.

4-32-706. Right of assignee to become a member.

4-32-707. Powers of estate of a deceased or incompetent member.

RESEARCH REFERENCES

Ark. L. Notes. Beard, The Small Business Tax Entity Pass Through Act—The Birth of a Duck, 1993 Ark. L. Notes 15.

Goforth, Limited Liability Partner-

ships: Does Arkansas Need Another Form of Business Enterprise?, 1995 Ark. L. Notes 57.

C.J.S. 68 C.J.S., Partn., § 428.

4-32-701. Ownership of limited liability company property.

(a) Property transferred to or otherwise acquired by a limited liability company is property of the limited liability company and not of the members individually.

(b) Property may be acquired, held, and conveyed in the name of the limited liability company. Any interest in real property may be acquired in the name of the limited liability company, and title to any interest so acquired shall vest in the limited liability company rather than in the members individually.

History. Acts 1993, No. 1003, § 701.

4-32-702. Transfer of real property.

(a) If the articles of organization do not provide that management is vested in a manager or managers, then property of the limited liability company held in the name of the limited liability company may be transferred by an instrument of transfer executed by any member in the name of the limited liability company.

(b) Property of the limited liability company that is held in the name of one (1) or more members or managers with an indication in the instrument transferring the property to them of their capacity as members or managers of a limited liability company or of the existence of a limited liability company, if the name of the limited liability company is not indicated, may be transferred by an instrument of transfer executed by the persons in whose name title is held.

(c) Property transferred under subsections (a) and (b) of this section may be recovered by the limited liability company only if it proves that the person executing the instrument had no authority to do so, and the initial transferee had knowledge of the lack of authority unless the property has been transferred by the initial transferee or a person claiming through the initial transferee to a subsequent transferee who gives value without having notice that the person who executed the instrument of initial transfer lacked authority to bind the limited liability company.

(d) Property of the limited liability company held in the name of one (1) or more persons other than the limited liability company without an indication in the instrument transferring title to the property to them of their capacity as members or managers of a limited liability company or of the existence of a limited liability company may be transferred free of any claims of the limited liability company or the members by the persons in whose name title is held to a transferee who gives value without having notice that it is property of the limited liability company.

(e) If the articles of organization provide that management of the limited liability company is vested in a manager or managers:

(1) Title to property of the limited liability company that is held in the name of the limited liability company may be transferred by an instrument of transfer executed by any manager in the name of the limited liability company; and

(2) A member, solely by reason of being a member, shall not have authority to transfer property of the limited liability company.

History. Acts 1993, No. 1003, § 702.

4-32-703. Nature of limited liability company interest.

A limited liability company interest is personal property.

History. Acts 1993, No. 1003, § 703.

4-32-704. Assignment of interest.

(a) Unless otherwise provided in writing in an operating agreement:

(1) A limited liability company interest is assignable in whole or in part;

(2) An assignment entitles the assignee to receive, to the extent assigned, only the distributions to which the assignor would be entitled;

(3) An assignment of a limited liability company interest does not dissolve the limited liability company or entitle the assignee to participate in the management and affairs of the limited liability company or to become or exercise any rights of a member;

(4) Until the assignee of a limited liability company interest becomes a member, the assignor continues to be a member and to have the power to exercise any rights of a member, subject to the member's right to remove the assignor pursuant to § 4-32-802(a)(3)(B);

(5) Until an assignee of a limited liability company interest becomes a member, the assignee has no liability, if any, as a member solely as a result of the assignment; and

(6) The assignor of a limited liability company interest is not released from his or her liability as a member solely as a result of the assignment.

(b) An operating agreement may provide that a member's limited liability company interest may be evidenced by a certificate of limited liability company interest issued by the limited liability company and may also provide for the assignment or transfer of any interest represented by the certificate.

History. Acts 1993, No. 1003, § 704.

4-32-705. Rights of judgment creditor.

On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the member's limited liability company interest with payment of the unsatisfied amount of judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the member's limited liability company interest. This chapter does not deprive any member of the benefit of any exemption laws applicable to his or her limited liability company interest.

History. Acts 1993, No. 1003, § 705.

4-32-706. Right of assignee to become a member.

(a) Unless otherwise provided in writing in an operating agreement, an assignee of a limited liability company interest may become a member only if the other members unanimously consent. The consent of a member may be evidenced in any manner specified in writing in an operating agreement, but in the absence of specification, consent shall be evidenced by a written instrument dated and signed by the member.

(b) An assignee who becomes a member has to the extent assigned the rights and powers and is subject to the restrictions and liabilities of a member under the articles of organization, any operating agreement, and this chapter. An assignee who becomes a member also is liable for any obligations of the assignor to make contributions under § 4-32-502. However, the assignee is not obligated for liabilities of which the assignee had no knowledge at the time he or she became a member and which could not be ascertained from the written records of the limited liability company kept pursuant to § 4-32-405.

(c) Whether or not an assignee of a limited liability company interest becomes a member, the assignor is not released from his or her liability, if any, to the limited liability company under § 4-32-502.

(d) Unless otherwise provided in writing in an operating agreement, a member who assigns his or her entire limited liability company interest ceases to be a member or to have the power to exercise any rights of a member when the assignee becomes a member with respect to the entire assigned interest.

History. Acts 1993, No. 1003, § 706.

4-32-707. Powers of estate of a deceased or incompetent member.

If a member who is an individual dies or a court of competent jurisdiction adjudges the member to be incompetent to manage his person or property, the member's executor, administrator, guardian, conservator, or other legal representative shall have all of the rights of an assignee of the member's interest.

History. Acts 1993, No. 1003, § 707.

SUBCHAPTER 8 — ADMISSION AND WITHDRAWAL OF MEMBERS

SECTION.

4-32-801. Admission of members.

4-32-802. Events of dissociation.

Effective Dates. Acts 1997, No. 479, § 16: March 13, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the limited liability company statute and other acts relating to pass through entities and related laws need amending in order to better reflect the intent and operation of those laws as originally drafted and to be consistent with current trends. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and

safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto. Notwithstanding the foregoing, SECTION 10 of this act (§ 4-32-802(c)) shall only apply to limited liability companies in existence [sic] on the effective date of this act in the event an election is made

with the Secretary of State to have this provision apply; otherwise, the original § 4-32-802(c) shall apply to limited liability companies existing on the effective date of this act.”

Acts 1999, No. 1528, § 13; Apr. 15, 1999. Emergency clause provided: “It is hereby found and determined by the Eighty-second General Assembly that the Small Business Entity Tax Pass Through Act and the Revised Limited Partnership Act of 1991 and other related acts and related laws need amending in order to better reflect the intent and operation of those laws. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its ap-

proval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto. Notwithstanding the foregoing, Section 4 of this act shall only apply to limited liability companies in existence on the effective date of this act in the event an election is made with the Secretary of State to have this provision apply; otherwise, the original § 4-32-802, as amended, shall apply to limited liability companies existing on the effective date of this act.”

RESEARCH REFERENCES

Ark. L. Notes. Beard, The Small Business Tax Entity Pass Through Act—The Birth of a Duck, 1993 Ark. L. Notes 15. Goforth, An Update on Arkansas Lim-

ited Liability Companies: New Tax Regulations and New State Laws, 1997 Ark. L. Notes 11.

4-32-801. Admission of members.

(a) Subject to subsection (b) of this section, a person may become a member in a limited liability company:

(1) In the case of a person acquiring a limited liability company interest directly from the limited liability company, upon compliance with an operating agreement or, if an operating agreement does not so provide in writing, upon the written consent of all members; and

(2) In the case of an assignee of a limited liability company interest, as provided in § 4-32-706.

(b) The effective time of admission of a member to a limited liability company shall be the later of:

(1) The date the limited liability company is formed; or

(2) The time provided in an operating agreement or, if no such time is provided therein, then when the person’s admission is reflected in the records of the limited liability company.

History. Acts 1993, No. 1003, § 801.

4-32-802. Events of dissociation.

(a) A person ceases to be a member of a limited liability company upon the occurrence of one (1) or more of the following events:

(1) The member withdraws by voluntary act from the limited liability company as provided in subsection (c) of this section;

(2) The member ceases to be a member of the limited liability company as provided in § 4-32-706;

(3) The member is removed as a member:

(A) In accordance with an operating agreement; or

(B) Unless otherwise provided in writing in an operating agreement, when the member assigns all of his or her interest in the limited liability company, by an affirmative vote of a majority of the members who have not assigned their interests;

(4) Unless otherwise provided in writing in an operating agreement or by the written consent of all members at the time, the member:

(A) Makes an assignment for the benefit of creditors;

(B) Files a voluntary petition in bankruptcy;

(C) Is adjudicated a bankrupt or insolvent;

(D) Files a petition or answer seeking for the member any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation;

(E) Files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the member in any proceeding of the nature described in (a)(4)(D) of this section; or

(F) Seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the member or of all or any substantial part of the member's properties;

(5) Unless otherwise provided in writing in an operating agreement or by the written consent of all members at the time, if:

(A) Within one hundred twenty (120) days after the commencement of any proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, the proceeding has not been dismissed; or

(B)(i) Within one hundred twenty (120) days after the appointment without his or her consent or acquiescence of a trustee, receiver, or liquidator of the member or of all or any substantial part of his or her properties, the appointment is not vacated or stayed; or

(ii) Within one hundred twenty (120) days after the expiration of any stay, the appointment is not vacated;

(6) Unless otherwise provided in writing in an operating agreement or by the written consent of all members at the time, in the case of a member who is an individual:

(i) The member's death; or

(ii) The entry of an order by a court of competent jurisdiction adjudicating the member incompetent to manage his or her person or estate;

(7) Unless otherwise provided in writing in an operating agreement or by the written consent of all members at the time, in the case of a member who is a trust or is acting as a member by virtue of being a trustee of a trust, the termination of the trust, but not merely the substitution of a new trustee;

(8) Unless otherwise provided in writing in an operating agreement or by the written consent of all members at the time, in the case of a member that is a separate limited liability company, the dissolution and commencement of winding up of the separate limited liability company;

(9) Unless otherwise provided in writing in an operating agreement or by the written consent of all members at the time, in the case of a member that is a corporation, the filing of a certificate of its dissolution or the equivalent for the corporation or the revocation of its charter and the lapse of ninety (90) days after notice to the corporation of revocation without reinstatement of its charter; or

(10) Unless otherwise provided in writing in an operating agreement or by the written consent of all members at the time, in the case of an estate, the distribution by the fiduciary of the estate's entire interest in the limited liability company.

(b) The members may provide in writing in an operating agreement for other events, the occurrence of which shall result in a person's ceasing to be a member of the limited liability company.

(c) A member may withdraw from a limited liability company only at the time or upon the happening of an event specified in the articles of organization or an operating agreement. Unless the articles of organization or an operating agreement provides otherwise, a member may not withdraw from a limited liability company prior to the dissolution and winding up of the limited liability company.

History. Acts 1993, No. 1003, § 802; 1997, No. 479, § 10; 1999, No. 1528, § 4.

Publisher's Notes. Acts 1999, No. 1528, § 13, provided, in part: "Section 4 of this act shall only apply to limited liability companies in existence on the effective date of this act in the event an election is made with the Secretary of State to have this provision apply; otherwise, the original § 4-32-802, as amended, shall apply to limited liability companies existing on the effective date of this act."

Acts 1999, No. 1528, § 4 amended only subsection (c) of this section. Prior to its 1999 amendment, subsection (c) of this section read as follows: "(c) Unless an operating agreement provides in writing that a member has no power to withdraw by voluntary act from a limited liability company, the member may do so at any time by giving thirty (30) days' written notice to the other members, or such other notice as is provided for in an operating agreement. If the member has the power to withdraw but the withdrawal is a breach of an operating agreement, or the withdrawal occurs as a result of otherwise wrongful conduct of the member, the lim-

ited liability company may recover from the withdrawing member damages for breach of the operating agreement or as a result of the wrongful conduct, including the reasonable cost of obtaining replacement of the services the withdrawn member was obligated to perform and may offset the damages against the amount otherwise distributable to him, in addition to pursuing any remedies provided for in an operating agreement or otherwise available under applicable law. Unless otherwise provided in an operating agreement, in the case of a limited liability company for a definite term or particular undertaking, a member may not withdraw from the limited liability company before the expiration of that term or undertaking."

Amendments. The 1997 amendment substituted "a member may not withdraw from the limited liability company before the expiration of that term or undertaking" for "a withdrawal by a member before the expiration of that term is a breach of the operating agreement" in the last sentence in (c).

The 1999 amendment rewrote (c).

SUBCHAPTER 9 — DISSOLUTION

SECTION.

- 4-32-901. Dissolution.
- 4-32-902. Judicial dissolution.
- 4-32-903. Winding up.
- 4-32-904. Agency power of managers or members after dissolution.
- 4-32-905. Distribution of assets.
- 4-32-906. Articles of dissolution.

SECTION.

- 4-32-907. Known claims against dissolved limited liability company.
- 4-32-908. Unknown claims against dissolved limited liability company.

Effective Dates. Acts 1999, No. 1528, § 13: Apr. 15, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that the Small Business Entity Tax Pass Through Act and the Revised Limited Partnership Act of 1991 and other related acts and related laws need amending in order to better reflect the intent and operation of those laws. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Gov-

ernor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto. Notwithstanding the foregoing, Section 4 of this act shall only apply to limited liability companies in existence on the effective date of this act in the event an election is made with the Secretary of State to have this provision apply; otherwise, the original § 4-32-802, as amended, shall apply to limited liability companies existing on the effective date of this act."

RESEARCH REFERENCES

Am. Jur. 59A Am. Jur. 2d, Partn., §§ 1402-1407.
Ark. L. Notes. Beard, The Small Busi-

ness Tax Entity Pass Through Act—The Birth of a Duck, 1993 Ark. L. Notes 15.
C.J.S. 68 C.J.S., Partn., §§ 440, 441.

4-32-901. Dissolution.

A limited liability company is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following:

- (1) At the time or upon the occurrence of events specified in writing in the articles of organization or an operating agreement, but if no such time is set forth in either of the foregoing, then the limited liability company shall have a perpetual existence;
- (2) The written consent of all members;
- (3) At any time there are no members, provided that, unless otherwise provided in the articles of organization or an operating agreement, the limited liability company is not dissolved and is not required to be wound up if within ninety (90) days or such other period as is provided for in the articles of organization or an operating agreement after the occurrence of the event that terminated the continued membership of the last remaining member, the personal representative of the last remaining member agrees in writing to continue the limited liability

company and to the admission of the personal representative of the member or its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member; and

(4) The entry of a decree of judicial dissolution under § 4-32-902.

History. Acts 1993, No. 1003, § 901;
1999, No. 1528, § 2.

Amendments. The 1999 amendment
rewrote this section.

4-32-902. Judicial dissolution.

On application by or for a member, a circuit court may decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business of the limited liability company in conformity with the operating agreement.

History. Acts 1993, No. 1003, § 902.

cuit courts, Ark. Const. Amend. 80, §§ 6,

Cross References. Jurisdiction of cir- 19.

4-32-903. Winding up.

Unless otherwise provided in writing in an operating agreement:

(1) The business or affairs of the limited liability company may be wound up:

(A) By the members or managers who have authority to manage the limited liability company prior to dissolution pursuant to § 4-32-401; or

(B) If one (1) or more of such members or managers have engaged in wrongful conduct, or upon other cause shown, by a circuit court on application of any member or any member's legal representative or assignee.

(2) The persons winding up the business or affairs of the limited liability company may, in the name of, and for and on behalf of, the limited liability company:

(A) Prosecute and defend suits;

(B) Settle and close the business of the limited liability company;

(C) Dispose of and transfer the property of the limited liability company;

(D) Discharge the liabilities of the limited liability company; and

(E) Distribute to the members any remaining assets of the limited liability company.

History. Acts 1993, No. 1003, § 903.

cuit courts, Ark. Const. Amend. 80, §§ 6,

Cross References. Jurisdiction of cir- 19.

4-32-904. Agency power of managers or members after dissolution.

(a) Except as provided in subsections (c)-(e) of this section, after dissolution of the limited liability company, each of the members having

authority to wind up the limited liability company's business and affairs can bind the limited liability company:

(1) By any act appropriate for winding up the limited liability company's affairs or completing transactions unfinished at dissolution; and

(2) By any transaction that would have bound the limited liability company if it had not been dissolved, if the other party to the transaction does not have notice of the dissolution.

(b) The filing of the articles of dissolution shall be presumed to constitute notice of dissolution for purposes of subdivision (a)(2) of this section.

(c) An act of a member which is not binding on the limited liability company pursuant to subsection (a) of this section is binding if it is otherwise authorized by the limited liability company.

(d) An act of a member which would be binding under subsection (a) of this section or would be otherwise authorized but which is in contravention of a restriction on authority shall not bind the limited liability company to persons having knowledge of the restriction.

(e) If the articles of organization vest management of the limited liability company in managers, a manager shall have the authority of a member provided for in subsection (a) of this section, and no member shall have such authority if the member is acting solely in the capacity of a member.

History. Acts 1993, No. 1003, § 904.

4-32-905. Distribution of assets.

Upon the winding up of a limited liability company, the assets shall be distributed as follows:

(1) Payment, or adequate provision for payment, shall be made to creditors, including, to the extent permitted by law, members who are creditors in satisfaction of liabilities of the limited liability company;

(2) Unless otherwise provided in writing in an operating agreement, to members or former members in satisfaction of liabilities for distributions under §§ 4-32-601 and 4-32-602; and

(3) Unless otherwise provided in writing in an operating agreement, to members and former members first for the return of their contribution and second in proportion to the members' respective rights to share in distributions from the limited liability company prior to dissolution.

History. Acts 1993, No. 1003, § 905.

4-32-906. Articles of dissolution.

After the dissolution of the limited liability company pursuant to § 4-32-901, the limited liability company may file articles of dissolution with the Secretary of State which set forth:

(1) The name of the limited liability company;

- (2) The date of filing of its articles of organization and all amendments thereto;
- (3) The reason for filing the articles of dissolution;
- (4) The effective date, which shall be a date certain, of the articles of dissolution if they are not to be effective upon the filing; and
- (5) Any other information the members or managers filing the certificate shall deem proper.

History. Acts 1993, No. 1003, § 906.

4-32-907. Known claims against dissolved limited liability company.

- (a) Upon dissolution, a limited liability company may dispose of the known claims against it by filing articles of dissolution pursuant to § 4-32-906 and following the procedures described in this section.
- (b) The limited liability company shall notify its known claimants in writing of the dissolution at any time after the effective date of dissolution. The written notice must:
 - (1) Describe information that must be included in a claim;
 - (2) Provide a mailing address where a claim may be sent;
 - (3) State the deadline, which may not be less than one hundred twenty (120) days after the later of the date of the written notice or the filing of articles of dissolution pursuant to § 4-32-906, by which the limited liability company must receive the claim; and
 - (4) State that the claim will be barred if not received by the deadline.
- (c) A claim against the limited liability company is barred:
 - (1) If a claimant who was given written notice under subsection (b) of this section does not deliver the claim to the limited liability company by the deadline; or
 - (2) If a claimant whose claim was rejected by the limited liability company does not commence a proceeding to enforce the claim within ninety (90) days after the date of the rejection notice or deemed rejection.
- (d) For purposes of this section, “claim” does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.
- (e) Provided, that any claim not responded to by the limited liability company within thirty (30) days after receipt shall be deemed to have been rejected.

History. Acts 1993, No. 1003, § 907.

4-32-908. Unknown claims against dissolved limited liability company.

- (a) A limited liability company may publish notice of its dissolution pursuant to this section which requests that persons with claims against the limited liability company present them in accordance with the notice.

(b) The notice must:

(1) Be published once in a newspaper of general circulation in the county where the limited liability company's principal office or, if none in this state, its registered office is located;

(2) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(3) State that a claim against the limited liability company will be barred unless a proceeding to enforce the claim is commenced within the earlier of five (5) years after the publication of the notice or the expiration of the applicable period of limitations otherwise provided under law.

(c) If the limited liability company publishes a newspaper notice in accordance with subsection (b) of this section and files articles of dissolution pursuant to § 4-32-906, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the limited liability company within the earlier of the applicable period of limitations otherwise provided under law or five (5) years after the later of the publication date of the newspaper notice or the filing of the articles of dissolution:

(1) A claimant who did not receive written notice under § 4-32-907; or

(2) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(d) A claim may be enforced under this section:

(1) Against the limited liability company, to the extent of its undistributed assets; or

(2) If the assets have been distributed in liquidation, against a member of the limited liability company to the extent of his or her pro rata share of the claim or the assets of the limited liability company distributed to him or her in liquidation, whichever is less, but a member's total liability for all claims under this section may not exceed the total amount of assets distributed to him or her in liquidation.

History. Acts 1993, No. 1003, § 908.

SUBCHAPTER 10 — FOREIGN LIMITED LIABILITY COMPANIES

SECTION.

4-32-1001. Law governing.

4-32-1002. Registration.

4-32-1003. Issuance of registration.

4-32-1004. Name.

4-32-1005. Amendments.

SECTION.

4-32-1006. Cancellation of registration.

4-32-1007. Transaction of business without registration.

4-32-1008. Transactions not constituting transacting business.

RESEARCH REFERENCES

Ark. L. Notes. Goforth, Limited Liability Partnerships: Does Arkansas Need An-

other Form of Business Enterprise?, 1995 Ark. L. Notes 57.

4-32-1001. Law governing.

Subject to the Arkansas Constitution, the laws of the state or other jurisdiction under which a foreign limited liability company is organized shall govern its organization and internal affairs and the liability and authority of its managers and members. A foreign limited liability company may not be denied registration by reason of any difference between those laws and the laws of this state.

History. Acts 1993, No. 1003, § 1001.

4-32-1002. Registration.

Before transacting business in this state, a foreign limited liability company shall register with the Secretary of State by submitting to the Secretary of State an original signed copy of an application for registration as a foreign limited liability company, together with a duplicate copy that may be either a signed, photocopied, or conformed copy, executed by a person with authority to do so under the laws of the state or other jurisdiction of its formation. The application shall set forth:

- (1) The name of the foreign limited liability company and, if different, the name under which it proposes to transact business in this state;
- (2) The state or other jurisdiction where formed and the date of its formation;
- (3) The name and address of a registered agent for service of process required to be maintained by § 4-32-105;
- (4) A statement that the Secretary of State is appointed the agent of the foreign limited liability company for service of process if the foreign limited liability company fails to appoint or maintain a registered agent in satisfaction of the requirements of § 4-32-105;
- (5) The address of the office required to be maintained in the state or other jurisdiction of its formation by the laws of that state or jurisdiction or, if not so required, of the principal office of the foreign limited liability company; and
- (6) A statement evidencing that the foreign limited liability company is a “foreign limited liability company” as defined in § 4-32-102(5).

History. Acts 1993, No. 1003, § 1002.

4-32-1003. Issuance of registration.

(a) If the Secretary of State finds that an application for registration conforms to the provisions of this chapter and all requisite fees have been paid, the Secretary of State shall:

- (1) Endorse on each signed original and duplicate copy the word “filed” and the date and time of its acceptance for filing;
- (2) Retain the signed original in the Secretary of State’s files; and
- (3) Return the duplicate copy to the person who filed it or the person’s representative.

(b) If the Secretary of State is unable to make the determination required for filing by subsection (a) of this section at the time any documents are delivered for filing, the documents are deemed to have been filed at the time of delivery if the Secretary of State subsequently determines that:

(1) The documents as delivered conform to the filing provisions of this chapter; or

(2) Within twenty (20) days after notification of nonconformance is given by the Secretary of State to the person who delivered the documents for filing or the person's representative, the documents are brought into conformance.

(c) If the filing and determination requirements of this chapter are not satisfied within the time prescribed in subdivision (b)(2) of this section, the documents shall not be filed.

History. Acts 1993, No. 1003, § 1003.

4-32-1004. Name.

No certificate of registration shall be issued to a foreign limited liability company unless the name of the company satisfies the requirements of § 4-32-103. If the name under which a foreign limited liability company is registered in the jurisdiction of its formation does not satisfy the requirements of § 4-32-103, to obtain or maintain a certificate of registration the foreign limited liability company may use a designated name that is available and which satisfies the requirements of § 4-32-103.

History. Acts 1993, No. 1003, § 1004.

4-32-1005. Amendments.

(a) The application for registration of a foreign limited liability company is amended by filing articles of amendment with the Secretary of State signed by a person with authority to do so under the laws of the state or other jurisdiction of its formation. The articles of amendment shall set forth:

- (1) The name of the foreign limited liability company;
- (2) The date the original application for registration was filed; and
- (3) The amendment to the application for registration.

(b) The application for registration may be amended in any way, provided that the application for registration as amended contains only provisions that may be lawfully contained in an application for registration at the time of the amendment.

History. Acts 1993, No. 1003, § 1005.

4-32-1006. Cancellation of registration.

(a) A foreign limited liability company authorized to transact business in this state may cancel its registration upon procuring from the Secretary of State a certificate of cancellation. In order to procure a certificate, the foreign limited liability company shall deliver to the Secretary of State an application for cancellation, which shall set forth:

(1) The name of the foreign limited liability company and the state or other jurisdiction under the laws of which it is formed;

(2) That the foreign limited liability company is not transacting business in this state;

(3) That the foreign limited liability company surrenders its certificate of registration to transact business in this state;

(4) That the foreign limited liability company revokes the authority of its registered agent for service of process in this state and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in this state during the time the foreign limited liability company was authorized to transact business in this state may thereafter be made on the foreign limited liability company by service thereof upon the Secretary of State; and

(5) An address to which a person may mail a copy of any process against the foreign limited liability company.

(b) The application for cancellation shall be in the form and manner designated by the Secretary of State and shall be executed on behalf of the foreign limited liability company by a person with authority to do so under the laws of the state or other jurisdiction of its formation, or, if the foreign limited liability company is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(c) A cancellation does not terminate the authority of the Secretary of State to accept service of process on the foreign limited liability company with respect to causes of action arising out of the doing of business in this state.

History. Acts 1993, No. 1003, § 1006.

4-32-1007. Transaction of business without registration.

(a) A foreign limited liability company transacting business in this state may not maintain an action, suit, or proceeding in a court of this state until it has registered in this state.

(b) The failure of a foreign limited liability company to register in this state does not:

(1) Impair the validity of any contract or act of the foreign limited liability company;

(2) Affect the right of any other party to the contract to maintain any action, suit, or proceeding on the contract; or

(3) Prevent the foreign limited liability company from defending any action, suit, or proceeding in any court of this state.

(c) A foreign limited liability company, by transacting business in this state without registration, appoints the Secretary of State as its

agent for service of process with respect to a cause of action arising out of the transaction of business in this state.

(d) A foreign limited liability company which transacts business in this state without registration shall be liable to the state for the years or parts thereof during which it transacted business in this state without registration in an amount equal to all fees which would have been imposed by this chapter upon that foreign limited liability company had it duly registered and all penalties imposed by this chapter. The Attorney General may bring proceedings to recover all amounts due this state under the provisions of this section.

(e) A foreign limited liability company which transacts business in this state without registration shall be subject to a civil penalty, payable to the state, not to exceed five thousand dollars (\$5,000) for each twelve-month period or part thereof, beginning with the date it began transacting business in this state and ending on the date it becomes registered.

(f) The civil penalty set forth in subsection (e) of this section may be recovered in an action brought within a court by the Attorney General. Upon a finding by the court that a foreign limited liability company has transacted business in this state in violation of this chapter, the court shall issue, in addition to the imposition of a civil penalty, an injunction restraining further transactions of the business of the foreign limited liability company and the further exercise of any limited liability company's rights and privileges in this state. The foreign limited liability company shall be enjoined from transacting business in this state until all civil penalties plus any interest and court costs which the court may assess have been paid and until the foreign limited liability company has otherwise complied with the provisions of this subchapter.

(g) A member or manager of a foreign limited liability company is not liable for the debts and obligations of the limited liability company solely because the limited liability company transacted business in this state without registration.

History. Acts 1993, No. 1003, § 1007.

4-32-1008. Transactions not constituting transacting business.

(a) The following activities of a foreign limited liability company, among others, do not constitute transacting business within the meaning of this subchapter:

- (1) Maintaining, defending, or settling any proceeding;
- (2) Holding meetings of its members or managers or carrying on any other activities concerning its internal affairs;
- (3) Maintaining bank accounts;
- (4) Maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited liability company's own securities or interests or maintaining trustees or depositories with respect to those securities or interests;
- (5) Selling through independent contractors;

(6) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(7) Creating or acquiring indebtedness, mortgages, and security interests in real or personal property;

(8) Securing or collecting debts or enforcing mortgages and security interests in property securing debts;

(9) Owning, without more, real or personal property;

(10) Conducting an isolated transaction that is completed within thirty (30) days and that is not one in the course of repeated transactions of a like nature; or

(11) Transacting business in interstate commerce.

(b) The foreign limited liability company shall not be considered to be transacting business solely because it:

(1) Owns a controlling interest in a corporation that is transacting business;

(2) Is a limited partner of a limited partnership that is transacting business; or

(3) Is a member or manager of a limited liability company or foreign limited liability company that is transacting business.

(c) This section does not apply in determining the contacts or activities that may subject a foreign limited liability company to service of process or taxation in this state or to other law or to regulation under any other law of this state.

History. Acts 1993, No. 1003, § 1008.

SUBCHAPTER 11 — SUITS BY AND AGAINST THE LIMITED LIABILITY COMPANY

SECTION.	SECTION.
4-32-1101. Suits by and against the limited liability company.	4-32-1103. Effect of lack of authority to sue.
4-32-1102. Authority to sue on behalf of limited liability company.	

RESEARCH REFERENCES

Am. Jur. 59A Am. Jur. 2d, Partn., §§ 1379-1401.	other Form of Business Enterprise?, 1995 Ark. L. Notes 57.
Ark. L. Notes. Goforth, Limited Liability Partnerships: Does Arkansas Need An-	C.J.S. 68 C.J.S., Partn., §§ 437-439.

4-32-1101. Suits by and against the limited liability company.

Suit may be brought by or against a limited liability company in its own name.

History. Acts 1993, No. 1003, § 1101.

4-32-1102. Authority to sue on behalf of limited liability company.

Unless otherwise provided in an operating agreement, a suit on behalf of the limited liability company may be brought only in the name of the limited liability company by:

(1) One (1) or more members of a limited liability company, whether or not an operating agreement vests management of the limited liability company in one (1) or more managers, who are authorized to sue by the vote of more than one-half ($\frac{1}{2}$) by number of the members eligible to vote thereon, unless the vote of all members shall be required pursuant to § 4-32-403(b), provided that in determining the vote required under § 4-32-403, the vote of any member who has an interest in the outcome of the suit that is adverse to the interest of the limited liability company shall be excluded; or

(2) One (1) or more managers of a limited liability company, if an operating agreement vests management of the limited liability company in one (1) or more managers, who are authorized to do so by the vote required pursuant to § 4-32-403 of the members eligible to vote thereon, provided that in determining the required vote, the vote of any manager who has an interest in the outcome of the suit that is adverse to the interest of the limited liability company shall be excluded.

History. Acts 1993, No. 1003, § 1102.

4-32-1103. Effect of lack of authority to sue.

The lack of authority of a member or manager to sue on behalf of the limited liability company may not be asserted as a defense to an action by the limited liability company or by the limited liability company as a basis for bringing a subsequent suit on the same cause of action.

History. Acts 1993, No. 1003, § 1103.

SUBCHAPTER 12 — MERGER AND CONSOLIDATION**SECTION.**

4-32-1201. Merger or consolidation.

4-32-1202. Approval of merger or consolidation.

4-32-1203. Articles of merger or consolidation.

SECTION.

4-32-1204. Effects of merger or consolidation.

Effective Dates. Acts 1997, No. 479, § 16; March 13, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the limited liability company statute and other acts relating to pass through entities and related laws need amending in order to better reflect

the intent and operation of those laws as originally drafted and to be consistent with current trends. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is

neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto. Notwithstanding the foregoing, SECTION 10 of this act (§ 4-32-802(c)) shall only apply to limited liability companies in existence [sic] on the effective date of this act in the event an election is made with the Secretary of State to have this provision apply; otherwise, the original § 4-32-802(c) shall apply to limited

liability companies existing on the effective date of this act.”

Acts 1997, No. 912, § 16: March 28, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly of the State of Arkansas that the general and limited partners statutes [sic] need amending in order to be consistent with current trends. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval.”

RESEARCH REFERENCES

Ark. L. Notes. Goforth, An Update on New Tax Regulations and New State
Arkansas Limited Liability Companies: Laws, 1997 Ark. L. Notes 11.

4-32-1201. Merger or consolidation.

(a) Unless otherwise provided in writing in an operating agreement, and subject to any law applicable to business entities other than limited liability companies, one (1) or more limited liability companies may merge or consolidate with or into one (1) or more other business entities with the limited liability company or other business entity as the merger or consolidation agreement shall provide being the surviving or resulting limited liability company or other business entity.

(b) Rights or securities of or interests in a business entity that is a party to the merger or consolidation may be exchanged for or converted into cash, property, obligations, or rights or securities of or interests in the surviving or resulting business entity or of any other business entity.

(c) As used in this subchapter, “business entity” or “business entities” shall mean domestic and foreign limited liability companies, corporations, general partnerships, limited partnerships, registered limited liability partnerships and registered limited liability limited partnerships.

History. Acts 1993, No. 1003, § 1201; 1997, No. 479, § 2; 1997, No. 912, § 1.

Amendments. The 1997 amendment by No. 479 substituted “companies, corporations, general partnerships, and limited partnerships” for “companies and corporations” in (c).

The 1997 amendment by No. 912 substituted “companies, corporations, general partnerships, limited partnerships, registered limited liability partnership and registered limited liability limited partnership” for “companies and corporations” in (c).

4-32-1202. Approval of merger or consolidation.

(a) Unless otherwise provided in writing in an operating agreement, a limited liability company that is a party to a proposed merger or consolidation shall approve the merger or consolidation agreement by the consent of more than one-half ($\frac{1}{2}$) by number of the members.

(b) Each business entity that is a party to a proposed merger or consolidation shall approve the merger or consolidation in the manner and by the vote required by the laws applicable to the business entity.

(c) Each business entity that is a party to the merger or consolidation shall have the rights to abandon the merger as are provided for in the merger or consolidation agreement or in the laws applicable to the business entity.

History. Acts 1993, No. 1003, § 1202; 1997, No. 479, § 3.

Amendments. The 1997 amendment substituted “Each business entity that is a

party” for “Each corporation and foreign limited liability company that is a party” in (b).

4-32-1203. Articles of merger or consolidation.

(a) The business entity surviving or resulting from the merger or consolidation shall deliver to the Secretary of State articles of merger or consolidation executed by each constituent entity setting forth:

(1) The name and jurisdiction of formation or organization of each business entity which is to merge or consolidate;

(2) That an agreement of merger or consolidation has been approved and executed by each business entity which is a party to the merger or consolidation;

(3) The name of the surviving or resulting business entity;

(4) The future effective date of the merger or consolidation, which shall be a date or time certain, if it is not to be effective upon the filing of the articles of merger or consolidation;

(5) That the agreement of merger or consolidation is on file at a place of business of the surviving or resulting business entity, and the address of that place of business;

(6) That a copy of the agreement of merger or consolidation will be furnished by the surviving or resulting business entity on request and without cost to any person holding an interest in any business entity which is to merge or consolidate; and

(7) If the surviving or resulting entity is not a business entity organized under the laws of this state, a statement that such surviving or resulting business entity:

(A) Agrees that it may be served with process in this state in any proceeding for enforcement of any obligation of any business entity party to the merger or consolidation that was organized under the laws of this state, as well as for enforcement of any obligation of the surviving business entity or the new business entity arising from the merger or consolidation; and

(B) Appoints the Secretary of State as its agent for service of process in any such proceeding, and the surviving business entity or the new business entity shall specify the address to which a copy of the process shall be mailed to it by the Secretary of State.

(b) A merger or consolidation takes effect upon the later of the effective date of the filing of the articles of merger or consolidation or the date set forth in the articles of merger or consolidation.

(c) The articles of merger or consolidation shall be executed by a limited liability company that is a party to the merger or consolidation in the manner provided for in § 4-32-204 and shall be filed with the Secretary of State in the manner provided for in § 4-32-205.

(d) Articles of merger or consolidation shall constitute articles of dissolution for a limited liability company which is not the surviving or resulting business entity in the merger or consolidation.

(e) An agreement of merger or consolidation approved in accordance with § 4-32-1202 may effect any amendment to an operating agreement or effect the adoption of a new operating agreement for a limited liability company if it is the surviving or resulting limited liability company in the merger or consolidation. An approved agreement of merger or consolidation may also provide that the operating agreement of any constituent limited liability company to the merger or consolidation, including a limited liability company formed for the purpose of consummating a merger or consolidation, shall be the operating agreement of the surviving or resulting limited liability company. Any amendment to an operating agreement or adoption of a new operating agreement made pursuant to this subsection shall be effective at the effective time or date of the merger or consolidation. The provisions of this subsection shall not be construed to limit the accomplishment of a merger or of any of the matters referred to herein by any other means provided for in an operating agreement or other agreement or as otherwise permitted by law.

History. Acts 1993, No. 1003, § 1203.

4-32-1204. Effects of merger or consolidation.

A merger or consolidation has the following effects:

(1) The business entities that are parties to the merger or consolidation agreement shall be a single entity, which, in the case of a merger shall be the entity designated in the plan of merger as the surviving entity, and, in the case of a consolidation, shall be the new entity provided for in the plan of consolidation;

(2) Each party to the merger or consolidation agreement except the surviving entity or the new entity shall cease to exist;

(3) The surviving entity or the new entity shall thereupon and thereafter possess all the rights, privileges, immunities, and powers of each constituent entity and shall be subject to all the restrictions, disabilities, and duties of each of such constituent entities to the extent the rights, privileges, immunities, powers, franchises, restrictions,

disabilities, and duties are applicable to the type of business entity that is the surviving entity or the new entity;

(4) All property, real, personal and mixed, and all debts due on whatever account, including promises to make capital contributions and subscriptions for shares, and all other choses in action, and all and every other interest of or belonging to or due to each of the constituent entities shall be vested in the surviving entity or the new entity without further act or deed;

(5) The title to all real estate and any interest therein vested in any such constituent entity shall not revert or be in any way impaired by reason of such merger or consolidation;

(6) The surviving entity or the new entity shall thenceforth be liable for all liabilities and obligations of each of the constituent entities so merged or consolidated, and any claim existing or action or proceeding pending by or against any such constituent entity may be prosecuted as if such merger or consolidation had not taken place, or the surviving entity or the new entity may be substituted in the action;

(7) Neither the rights of creditors nor any liens on the property of any constituent entity shall be impaired by the merger or consolidation; and

(8) The interests in a limited liability company or shares or other interests in a corporation that are to be converted or exchanged into interests, shares or other securities, cash, obligations or other property under the terms of the merger or consolidation agreement are so converted, and the former holders thereof are entitled only to the rights provided in the merger or consolidation agreement or the rights otherwise provided by law.

History. Acts 1993, No. 1003, § 1204.

SUBCHAPTER 13 — MISCELLANEOUS

SECTION.

- 4-32-1301. Filing, service, and copying fees.
- 4-32-1302. Appeal from Secretary of State's refusal to file document.
- 4-32-1303. Definition of knowledge.
- 4-32-1304. Rules of construction.
- 4-32-1305. Powers of Secretary of State.
- 4-32-1306. Severability.
- 4-32-1307. Interstate application.
- 4-32-1308. Filing requirements.

SECTION.

- 4-32-1309. Correcting filed document.
- 4-32-1310. Evidentiary effect of copy of filed document.
- 4-32-1311. Certificate of existence.
- 4-32-1312. Penalty for signing false documents.
- 4-32-1313. Tax status.
- 4-32-1314. Governing law.
- 4-32-1315. Full faith and credit.
- 4-32-1316. Repealer.

RESEARCH REFERENCES

C.J.S. 68 C.J.S., Partn., § 412.

4-32-1301. Filing, service, and copying fees.

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to him or her for filing:

DOCUMENT	FEE
(1) Articles of organization	\$ 50.00
(2) Application for use of indistinguishable name ...	25.00
(3) Application for reserved name	25.00
(4) Notice of transfer of reserved name	25.00
(5) Statement of change of registered agent or registered office or both	25.00
(6) Agent's statement of change of registered office for each affected limited liability company not to exceed a total of	125.00
(7) Agent's statement of resignation	25.00
(8) Amendment of articles of organization	25.00
(9) Restatement of articles of organization with amendment of articles of organization	25.00
(10) Articles of merger or share exchange	50.00
(11) Articles of dissolution	50.00
(12) Certificate of judicial dissolution	No fee
(13) Application for certificate of authority by foreign limited liability company	300.00
(14) Application for amended certificate of authority by foreign limited liability company	300.00
(15) Application for certificate of withdrawal by foreign limited liability company	25.00
(16) Certificate of revocation of authority to transact business	No fee
(17) Articles of correction	30.00
(18) Application for certificate of existence or authorization by domestic limited liability company ..	15.00
(19) Any other document required or permitted to be filed by this chapter	25.00

(b) The Secretary of State shall collect a fee of twenty-five dollars (\$25.00) each time process is served on him or her under this chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if he or she prevails in the proceeding.

(c) The Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign limited liability company:

- (1) Fifty cents (50¢) a page for copying; and
- (2) Five dollars (\$5.00) for the certificate.

(d) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to him or her by electronic means:

DOCUMENT	FEE	PROCESSING FEE
(1) Articles of organization for domestic limited liability company	\$ 40.00	\$ 5.00
(2) Certificate of amendment to articles of organization for a domestic limited liability company	\$ 18.50	\$ 4.00
(3) Notice of change of registered office or agent or both for limited liability company	\$ 18.50	\$ 4.00
(4) Application for reservation of limited liability company name	\$ 18.50	\$ 4.00
(5) Notice of transfer of reserved name	\$ 18.50	\$ 4.00
(6) Application for certificate of registration of foreign limited liability company	\$258.00	\$12.00
(7) Application for amended certificate of authority by foreign limited liability company	\$258.00	\$12.00
(8) Application for fictitious name for foreign limited liability company	\$ 18.50	\$ 4.00
(9) For any other document not listed above, the cost for electronic filing is:		
(A) Four dollars (\$4.00) for processing fee when filing fee is \$0 to \$50;		
(B) Five dollars (\$5.00) for processing fee when filing fee is \$51 to \$99;		
(C) Ten dollars (\$10.00) for processing fee when filing fee is \$100 to \$299; and		
(D) Twelve dollars (\$12.00) for processing fee when filing fee is \$300 or more.		

History. Acts 1993, No. 1003, § 1302; 2001, No. 1395, § 2.

Amendments. The 2001 amendment added (d).

4-32-1302. Appeal from Secretary of State’s refusal to file document.

- (a) If the Secretary of State refused to file a document delivered to his or her office for filing, the domestic or foreign limited liability company may appeal the refusal within thirty (30) days after the return of the document to the Pulaski County Circuit Court. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the Secretary of State’s explanation of his refusal to file.
- (b) The court may summarily order the Secretary of State to file the document or take other action the court considers appropriate.
- (c) The court’s final decision may be appealed as in other civil proceedings.

History. Acts 1993, No. 1003, § 1304.

4-32-1303. Definition of knowledge.

A person has “knowledge” of a fact within the meaning of this chapter not only when he or she has actual knowledge thereof, but also when he or she has knowledge of such other facts as in the circumstances shows bad faith.

History. Acts 1993, No. 1003, § 1309.

4-32-1304. Rules of construction.

(a) It is the policy of this chapter to give maximum effect to the principle of freedom of contract and to the enforceability of operating agreements.

(b) Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

(c) Rules that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.

(d) Neither this chapter nor any amendment of this chapter shall be construed so as to impair the obligations of any contract existing when the chapter or amendment goes into effect, nor to affect any action or proceedings begun or right accrued before the chapter or amendment takes effect.

History. Acts 1993, No. 1003, § 1310.

4-32-1305. Powers of Secretary of State.

The Secretary of State has the power reasonably necessary to perform the duties required of him or her by this chapter.

History. Acts 1993, No. 1003, § 1308.

4-32-1306. Severability.

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application. To this end, the provisions of this chapter are severable.

History. Acts 1993, No. 1003, § 1311.

4-32-1307. Interstate application.

A limited liability company organized and existing under this chapter may conduct its business, carry on its operations, and have and exercise the powers granted by this chapter in any state or foreign country.

History. Acts 1993, No. 1003, § 1312.

4-32-1308. Filing requirements.

(a) A document must satisfy the requirements of this section, and of any other section that adds to or varies from these requirements, to be entitled to filing by the Secretary of State.

(b) This chapter must require or permit filing the document in the office of the Secretary of State.

(c) The document must contain the information required by this chapter. It may contain other information as well.

(d) The document must be typewritten or printed.

(e) The document must be in the English language. A limited liability company or foreign limited liability company name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign limited liability companies need not be in English if accompanied by a reasonably authenticated English translation.

(f) The document must be executed:

(1) The original signed copy, together with a duplicate copy that may either be a signed, photocopied, or conformed copy, of any document required to be filed pursuant to this chapter, shall be delivered to the Secretary of State. When the Secretary of State determines that the documents conform to the filing provisions of this chapter and when all required filing fees, taxes, license fees, or penalties required by this chapter or other law have been paid, the Secretary of State shall:

(A) Have endorsed on each signed original and duplicate copy the word "filed" and the date and time of the documents' acceptance for filing;

(B) Retain the signed original in the Secretary of State's file; and

(C) Return the duplicate copy to the person who filed it or the person's representative.

(2) If at the time any documents are delivered for filing, the Secretary of State is unable to make the determination required for filing, the documents are deemed to have been filed at the time of delivery if the Secretary of State subsequently determines that:

(A) The documents as delivered conform to the filing provisions of this chapter;

(B) The documents have been brought into conformance within twenty (20) days after notification of nonperformance is given by the Secretary of State to the person who delivered the documents for filing or that person's representative.

(3) If the filing and determination requirements of this chapter are not satisfied within the time prescribed in subdivision (f)(2)(B) of this section, the documents shall not be filed.

(4) A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document may not be later than the ninetieth day after the date it is filed.

History. Acts 1993, No. 1003, § 1301.

4-32-1309. Correcting filed document.

(a) A domestic or foreign limited liability company may correct a document filed by the Secretary of State if the document:

(1) Contains an incorrect statement; or
(2) Was defectively executed, attested, sealed, verified, or acknowledged.

(b) A document is corrected:

(1) By preparing articles of correction that:

(A) Describe the document, including its filing date, or attach a copy of it to the articles;

(B) Specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective; and

(C) Correct the incorrect statement or defective execution; and

(2) By delivering the articles to the Secretary of State for filing.

(c) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

History. Acts 1993, No. 1003, § 1303.

4-32-1310. Evidentiary effect of copy of filed document.

A certificate attached to a copy of a document filed by the Secretary of State, bearing his or her signature, which may be in facsimile, and the seal of this state, is conclusive evidence that the original document is on file with the Secretary of State.

History. Acts 1993, No. 1003, § 1305.

4-32-1311. Certificate of existence.

(a) Anyone may apply to the Secretary of State to furnish a certificate of existence for a domestic limited liability company or a certificate of authorization for a foreign limited liability company.

(b) A certificate of existence or authorization sets forth:

(1) The domestic limited liability company name or the foreign limited liability company's corporate name used in this state;

(2)(A) That the domestic limited liability company is duly formed under the laws of this state, the date of its formation, and the period of its duration; or

(B) That the foreign limited liability company is authorized to transact business in this state;

(3) That all fees, taxes, and penalties owed to this state have been paid if:

(A) Payment is reflected in the records of the Secretary of State; and

(B) Nonpayment affects the existence or authorization of the domestic or foreign limited liability company.

(4) That articles of dissolution have not been filed; and

(5) Other facts of record in the office of the Secretary of State that may be requested by the applicant.

(c) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the Secretary of State may be relied upon as conclusive evidence that the domestic or foreign limited liability company is in existence or is authorized to transact business in this state.

History. Acts 1993, No. 1003, § 1306.

4-32-1312. Penalty for signing false documents.

(a) A person commits an offense if he or she signs a document he or she knows is false in any material respect with intent that the document be delivered to the Secretary of State for filing.

(b) An offense under this section is a Class C misdemeanor.

History. Acts 1993, No. 1003, § 1307.

4-32-1313. Tax status.

Every limited liability company having two (2) or more members shall make a return for each taxable year as required for every partnership pursuant to § 26-51-802. The income and expenses of every limited liability company having only one (1) member shall be reported on the member's income tax return.

History. Acts 1993, No. 1003, § 1313.

4-32-1314. Governing law.

(a) The liability of members, managers, employees, and agents of a limited liability company organized and existing under this chapter shall at all times be determined solely and exclusively by this chapter and the laws of this state.

(b) If a conflict arises between the law of this state and the laws of any other jurisdiction with regard to the liability of a member, manager, employee, or agent of a limited liability company organized and existing under this chapter for the debts, obligations, and liabilities of the limited liability company, or for the acts or omissions of another member, manager, employee, or agent of the limited liability company, this chapter and the laws of this state shall govern in determining such liability.

History. Acts 1993, No. 1003, § 1314.

4-32-1315. Full faith and credit.

It is the intent of the legislature that the legal existence of limited liability companies organized under this chapter be recognized outside the boundaries of this state and that, subject to any reasonable requirement of registration, a domestic limited liability company transacting business outside this state be granted full faith and credit under Section 1 of Article IV of the Constitution of the United States.

History. Acts 1993, No. 1003, § 1315.

4-32-1316. Repealer.

All laws and parts of laws in conflict with the provisions of this chapter are hereby repealed. Furthermore, the laws of this state relating to the establishment and regulation of professional service are hereby amended and superseded to the extent such laws are inconsistent as to form of organization with the provisions of this chapter, and are deemed amended to permit the provisions of professional service within this state by limited liability companies. By way of example and not by way of limitation of the foregoing, §§ 17-12-702 and 16-114-302 presently apply to persons, partnerships, and corporations and shall hereafter be deemed to apply to persons, partnerships, corporations, and limited liability companies.

History. Acts 1993, No. 1003, § 1316.

SUBCHAPTER 14 — MEDICAL OR DENTAL LIMITED LIABILITY COMPANY**SECTION.**

4-32-1401. Certification of registration.

A.C.R.C. Notes. References to “this chapter” in subchapters 1-13 may not apply to this subchapter, which was enacted subsequently.

Cross References. As to medical corporations, see § 4-29-301 et seq.

As to dental corporations, see § 4-29-401 et seq.

4-32-1401. Certification of registration.

(a) A limited liability company formed under this chapter and that will engage in the practice of medicine must obtain a certificate of registration from the Arkansas State Medical Board and must comply with the statutes of the Medical Corporation Act as found in § 4-29-301 et seq.

(b) A limited liability company formed under this chapter and that will engage in the practice of dentistry must obtain a certificate of registration and comply with the statutes in the Dental Corporation Act as found in § 4-29-401 et seq.

History. Acts 1997, No. 338, § 1.

CHAPTER 33

THE ARKANSAS NONPROFIT CORPORATION ACT OF
1993

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ORGANIZATION.
3. PURPOSES AND POWERS.
4. NAMES.
5. OFFICE AND AGENT.
6. MEMBERS AND MEMBERSHIP.
7. MEMBERS' MEETINGS AND VOTING.
8. DIRECTORS AND OFFICERS.
9. [RESERVED.]
10. AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS.
11. MERGER.
12. SALE OF ASSETS.
13. DISTRIBUTIONS.
14. DISSOLUTION.
15. FOREIGN CORPORATIONS.
16. [RESERVED.]
17. TRANSITION PROVISIONS.

Publisher's Notes. Acts 1993, No. 1147, § 103 provided:

"(a) Subchapter 1 means Sections 101 through Section 170 of this act.

(b) Subchapter 2 means Sections 201 through Section 207 of this act.

(c) Subchapter 3 means Sections 301 through Section 304 of this act.

(d) Subchapter 4 means Sections 401 through Section 403 of this act.

(e) Subchapter 5 means Sections 501 through Section 504 of this act.

(f) Subchapter 6 means Sections 601 through Section 630 of this act.

(g) Subchapter 7 means Sections 701 through Section 730 of this act.

(h) Subchapter 8 means Sections 801 through Section 858 of this act.

(i) Subchapter 10 means Sections 1001 through Section 1031 of this act.

(j) Subchapter 11 means Sections 1101 through Section 1108 of this act.

(k) Subchapter 12 means Sections 1201 through Section 1202 of this act.

(l) Subchapter 13 means Sections 1301 through Section 1302 of this act.

(m) Subchapter 14 means Sections 1401 through Section 1440 of this act.

(n) Subchapter 15 means Sections 1501 through Section 1532 of this act.

(o) Subchapter 17 means Sections 1701 through Section 1706 of this act.

(p) Subchapter 18 means Sections 1801 through Section 1809 of this act."

For Commentary regarding the Revised Model Nonprofit Corporation Act, see Commentaries Volume A.

Effective Dates. Acts 1993, No. 1147, § 1705: January 1, 1994.

Cross References. Public bodies and bodies corporate and politic, § 4-34-101 et seq.

Water provider corporations, § 4-35-101 et seq.

RESEARCH REFERENCES

ALR. Restrictions on right of legal services corporation or "public interest" law

firm to practice. 26 ALR 4th 614.

Right of member of nonprofit associa-

tion or corporation to possession, inspection, or use of membership lists. 37 ALR 4th 1206.

Exemption of nonprofit theater or concert hall from local property taxation. 42 ALR 4th 614.

Exemption from real property taxation of residential facilities maintained by hospitals for patients, staff, or others. 61 ALR 1105.

Attorney's obligation to share fee award with party representing public interest. 43 ALR 5th 793.

Exemption of charitable or educational

organization from sales or use tax. 69 ALR 5th 477.

Ark. L. Notes. Mathews, A Review of Arkansas Statutes Affecting Business and Other Organizations Enacted Since 1990, 1998 Ark. L. Notes 65.

Am. Jur. 18 Am. Jur. 2d, Corp. §§ 32, 33.

C.J.S. 18 C.J.S., Corp., §§ 5, 312.

UALR L.J. Harris, The Nonprofit Corporation Act of 1993: Considering the Election to Apply the New Law to Old Corporations, 16 UALR L.J. 1.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

Part A — Short Title and Applications

4-33-101. Short title.

4-33-102. Reservation of power to amend or repeal.

4-33-103 — 4-33-119. [Reserved.]

Part B — Filing Documents

4-33-120. Filing requirements.

4-33-121. Forms.

4-33-122. Filing, service, and copying fees.

4-33-123. Effective date of document.

4-33-124. Correcting filed document.

4-33-125. Filing duty of Secretary of State.*

4-33-126. Appeal from Secretary of State's refusal to file document.

4-33-127. Evidentiary effect of copy of filed document.

4-33-128. Certificate of existence.

4-33-129. Penalty for signing false document.

Part C — Secretary of State

4-33-130. Powers.

SECTION.

4-33-131 to 4-33-139. [Reserved.]

Part D — Definitions

4-33-140. Chapter definitions.

4-33-141. Notice.

4-33-142 — 4-33-149. [Reserved.]

Part E — Private Foundations

4-33-150. Internal revenue section 501(c)(3) — Organizations and private foundations.

4-33-151 — 4-33-159. [Reserved.]

Part F — Judicial Relief

4-33-160. Judicial relief.

4-33-161 — 4-33-169. [Reserved.]

Part G — Attorney General

4-33-170 — 4-33-179. [Reserved.]

Part H — Religious Corporations — Constitutional Protections

4-33-180. Religious corporations — Constitutional protections.

Part A — Short Title and Applications

4-33-101. Short title.

This chapter shall be known and may be cited as the “Arkansas Nonprofit Corporation Act of 1993”.

History. Acts 1993, No. 1147, § 101.

4-33-102. Reservation of power to amend or repeal.

The General Assembly has power to amend or repeal all or part of this chapter at any time and all domestic and foreign corporations subject to this chapter are governed by the amendment or repeal.

History. Acts 1993, No. 1147, § 102.

4-33-103 — 4-33-119. [Reserved.]**Part B — Filing Documents****4-33-120. Filing requirements.**

(a) A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing by the Secretary of State.

(b) This chapter must require or permit filing the document in the office of the Secretary of State.

(c) The document must contain the information required by this chapter. It may contain other information as well.

(d) The document must be typewritten or printed.

(e) The document must be in the English language. However, a corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

(f) The document must be executed:

(1) by the presiding officer of its board of directors of a domestic or foreign corporation, its president, or by another of its officers;

(2) if directors have not been selected or the corporation has not been formed, by an incorporator; or

(3) if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(g) The person executing a document shall sign it and state beneath or opposite the signature his or her name and the capacity in which he or she signs. The document may, but need not, contain:

(1) the corporate seal;

(2) an attestation by the secretary or an assistant secretary; or

(3) an acknowledgment, verification, or proof.

(h) If the Secretary of State has prescribed a mandatory form for a document under § 4-33-121, the document must be in or on the prescribed form.

(i) The document must be delivered to the office of the Secretary of State for filing and must be accompanied by one (1) exact or conformed copy (except as provided in §§ 4-33-503 and 4-33-1509), the correct filing fee, and any franchise tax, license fee, or penalty required by this chapter or other law.

History. Acts 1993, No. 1147, § 120.

4-33-121. Forms.

The Secretary of State may prescribe and furnish on request, forms for: (1) an application for a certificate of existence; (2) a foreign corporation’s application for a certificate of authority to transact business in this state; and (3) a foreign corporation’s application for a certificate of withdrawal. If the Secretary of State so requires, use of these forms is mandatory.

History. Acts 1993, No. 1147, § 121.

4-33-122. Filing, service, and copying fees.

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered for filing:

DOCUMENT	FEE
(1) Articles of incorporation	\$50.00
(2) Application for use of indistinguishable name ...	no fee
(3) Application for reserved name	\$25.00
(4) Notice of transfer of reserved name	\$25.00
(5) Application for registered name	\$50.00
(6) Application for renewal of registered name	\$25.00
(7) Corporation’s statement of change of registered agent or registered office or both	\$25.00
(8) Agent’s statement of change of registered office for each affected corporation not to exceed a total of	\$125.00
(9) Agent’s statement of resignation	no fee
(10) Amendment of articles of incorporation	\$50.00
(11) Restatement of articles of incorporation with amendments	\$100.00
(12) Articles of merger	\$100.00
(13) Articles of dissolution	\$50.00
(14) Articles of revocation of dissolution	\$150.00
(15) Certificate of administrative dissolution	no fee
(16) Application for reinstatement following administrative dissolution	\$50.00
(17) Certificate of reinstatement	no fee
(18) Certificate of judicial dissolution	no fee
(19) Application for certificate of authority	\$300.00
(20) Application for amended certificate of authority .	\$300.00
(21) Application for certificate of withdrawal	\$300.00
(22) Certificate of revocation of authority to transact business	no fee
(23) Articles of correction	\$30.00

DOCUMENT	FEE
(24) Application for certificate of existence or authorization	\$15.00
(25) Any other document required or permitted to be filed by this chapter.	\$25.00

(b) The Secretary of State shall collect a fee of twenty-five dollars (\$25.00) upon being served with process under this chapter. The party to a proceeding causing service of process is entitled to recover the fee paid the Secretary of State as costs if the party prevails in the proceeding.

(c) The Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

- (1) Fifty cents (50¢) a page for copying; and
- (2) Five dollars (\$5.00) for the certificate.

(d) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to him by electronic means:

DOCUMENT	FEE	PROCESSING FEE
(1) Articles of incorporation for domestic non-profit corporation	\$ 40.00\$ 5.00
(2) Certificate of amendment of a non-profit corporation	\$ 40.00\$ 5.00
(3) Articles of dissolution of a non-profit corporation	\$ 40.00\$ 5.00
(4) Application for foreign non-profit corporation seeking to do business in Arkansas .	\$258.00\$12.00
(5) For any other document not listed above, the cost for electronic filing is:		

- (A) \$4 for processing fee when filing fee is \$0 to \$50;
- (B) \$5 for processing fee when filing fee is \$51 to \$99;
- (C) \$10 for processing fee when filing fee is \$100 to \$299; and
- (D) \$12 for processing fee when filing fee is \$300 or more.

History. Acts 1993, No. 1147, § 122;

Amendments. The 2001 amendment added (d).

4-33-123. Effective date of document.

(a) Except as provided in subsection (b) of this section, a document is effective:

- (1) at the time of filing on the date it is filed, as evidenced by the Secretary of State's endorsement on the original document; or
- (2) at the time specified in the document as its effective time on the date it is filed.

(b) A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date

for a document may not be later than the ninetieth day after the date filed.

History. Acts 1993, No. 1147, § 123.

4-33-124. Correcting filed document.

(a) A domestic or foreign corporation may correct a document filed by the Secretary of State if the document contains an incorrect statement, or was defectively executed, attested, sealed, verified, or acknowledged.

(b) A document is corrected:

(1) by preparing articles of correction that (i) describe the document (including its filing date) or attach a copy of it to the articles, (ii) specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective, and (iii) correct the incorrect statement or defective execution; and

(2) by delivering the articles of correction to the Secretary of State.

(c) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

History. Acts 1993, No. 1147, § 124.

4-33-125. Filing duty of Secretary of State.

(a) If a document delivered to the office of the Secretary of State for filing satisfies the requirements of § 4-33-120, the Secretary of State shall file it.

(b) The Secretary of State files a document by stamping or otherwise endorsing “Filed,” together with the Secretary of State’s name and official title and the date and the time of receipt, on both the original and copy of the document and on the receipt for the filing fee. After filing a document, except as provided in §§ 4-33-503 and 4-33-1510, the Secretary of State shall deliver the document copy, with the filing fee receipt (or acknowledgement of receipt if no fee is required) attached, to the domestic or foreign corporation or its representative.

(c) Upon refusing to file a document, the Secretary of State shall return it to the domestic or foreign corporation or its representative within five (5) days after the document was delivered, together with a brief, written explanation of the reason or reasons for the refusal.

(d) The Secretary of State’s duty to file documents under this section is ministerial. Filing or refusal to file a document does not:

(1) affect the validity or invalidity of the document in whole or in part;

(2) relate to the correctness or incorrectness of information contained in the document; or

(3) create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

History. Acts 1993, No. 1147, § 125.

4-33-126. Appeal from Secretary of State's refusal to file document.

(a) If the Secretary of State refuses to file a document delivered for filing to the Secretary of State's office, the domestic or foreign corporation may appeal the refusal to the circuit court in the county where the corporation's principal office, or if there is none in this state, its registered office, is or will be located. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the Secretary of State's explanation of the refusal to file.

(b) The court may summarily order the Secretary of State to file the document or take other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

History. Acts 1993, No. 1147, § 126.

Cross References. Jurisdiction of cir-

cuit courts, Ark. Const. Amend. 80, §§ 6, 19.

4-33-127. Evidentiary effect of copy of filed document.

A certificate attached to a copy of a document bearing the Secretary of State's signature (which may be in facsimile) and the seal of this state, is conclusive evidence that the original document is on file with the Secretary of State.

History. Acts 1993, No. 1147, § 127.

4-33-128. Certificate of existence.

(a) Any person may apply to the Secretary of State to furnish a certificate of existence for a domestic or foreign corporation.

(b) The certificate of existence sets forth:

(1) the domestic corporation's corporate name or the foreign corporation's corporate name used in this state;

(2) that (i) the domestic corporation is duly incorporated under the law of this state, the date of its incorporation, and the period of its duration if less than perpetual; or (ii) that the foreign corporation is authorized to transact business in this state;

(3) that all fees, taxes, and penalties owed to this state have been paid, if (i) payment is reflected in the records of the Secretary of State and (ii) nonpayment affects the good standing of the domestic or foreign corporation;

(4) that articles of dissolution have not been filed; and

(5) other facts of record in the office of the Secretary of State that may be requested by the applicant.

(c) Subject to any qualification stated in the certificate, a certificate of existence issued by the Secretary of State may be relied upon as

conclusive evidence that the domestic or foreign corporation is in good standing in this state.

History. Acts 1993, No. 1147, § 128.

4-33-129. Penalty for signing false document.

(a) A person commits an offense by signing a document such person knows is false in any material respect with intent that the document be delivered to the Secretary of State for filing.

(b) An offense under this section is a Class C misdemeanor.

History. Acts 1993, No. 1147, § 129.

Part C — Secretary of State

4-33-130. Powers.

The Secretary of State has the power reasonably necessary to perform the duties required of him by this chapter.

History. Acts 1993, No. 1147, § 130.

4-33-131 to 4-33-139. [Reserved.]

Part D — Definitions

4-33-140. Chapter definitions.

Unless the context otherwise requires in this chapter:

(1) “Approved by (or approval by) the members” means approved or ratified by the affirmative vote of a majority of the votes represented and voting at a duly held meeting at which a quorum is present (which affirmative votes also constitute a majority of the required quorum) or by a written ballot or written consent in conformity with this chapter or by the affirmative vote, written ballot or written consent of such greater proportion, including the votes of all the members of any class, unit or grouping as may be provided in the articles, bylaws or this chapter for any specified member action.

(2) “Articles of incorporation” or “articles” include amended and restated articles of incorporation and articles of merger.

(3) “Board” or “board of directors” means the board of directors except that no person or group of persons are the board of directors because of powers delegated to that person or group pursuant to § 4-33-801.

(4) “Bylaws” means the code or codes of rules (other than the articles) adopted pursuant to this chapter for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated.

(5) “Class” refers to a group of memberships which have the same rights with respect to voting, dissolution, redemption and transfer. For

the purpose of this section, rights shall be considered the same if they are determined by a formula applied uniformly.

(6) "Corporation" means public benefit, mutual benefit and religious corporation.

(7) "Delegates" means those persons elected or appointed to vote in a representative assembly for the election of a director or directors or on other matters.

(8) "Deliver" includes mail.

(9) "Designated director" means a director who is authorized by the articles or bylaws of a corporation to be appointed by any person, corporation, or entity to a position as one (1) or more of the directors of the corporation.

(10) "Directors" means individuals, designated in the articles or bylaws or elected by the incorporators, and their successors and individuals elected or appointed by any other name or title to act as members of the board.

(11) "Distribution" means the payment of a dividend or any part of the income or profit of a corporation to its members, directors or officers.

(12) "Domestic corporation" means a corporation organized under the laws of this state.

(13) "Effective date of notice" is defined in § 4-33-141.

(14) "Employee" does not include an officer or director who is not otherwise employed by the corporation.

(15) "Entity" includes corporation and foreign corporation; business corporation and foreign business corporation; profit and nonprofit unincorporated association; corporation sole; business trust, estate, partnership, trust, and two (2) or more persons having a joint or common economic interest; and state, United States, and foreign government.

(16) "File," "filed," or "filing" means filed in the office of the Secretary of State.

(17) "Foreign corporation" means a corporation organized under a law other than the law of this state which would be a nonprofit corporation if formed under the laws of this state.

(18) "Governmental subdivision" includes authority, county, district, and municipality.

(19) "Includes" denotes a partial definition.

(20) "Individual" includes the estate of an incompetent individual.

(21) "Means" denotes a complete definition.

(22) "Member" means (without regard to what a person is called in the articles or bylaws) any person or persons who on more than one (1) occasion, pursuant to a provision of a corporation's articles or bylaws, have the right to vote for the election of a director or directors.

A person is not a member by virtue of any of the following:

(i) any rights such person has as a delegate;

(ii) any rights such person has to designate a director or directors;
or

(iii) any rights such person has as a director.

(23) "Membership" refers to the rights and obligations a member or members have pursuant to a corporation's articles, bylaws and this chapter.

(24) "Mutual benefit corporation" means a domestic corporation which is formed as a mutual benefit corporation pursuant to §§ 4-33-201 et seq., or is required to be a mutual benefit corporation pursuant to § 4-33-1707, formed to benefit, represent and serve a group of individuals or entities.

(25) "Notice" is defined in § 4-33-141.

(26) "Person" includes any individual or entity.

(27) "Principal office" means the office (in or out of this state) so designated in the bylaws or, if none, the registered office of a domestic or foreign corporation.

(28) "Proceeding" includes civil suit and criminal, administrative, and investigatory action.

(29) "Public benefit corporation" means a domestic corporation which is formed as a public benefit corporation pursuant to §§ 4-33-201 et seq., or is required to be a public benefit corporation pursuant to § 4-33-1707 to perform good works, to benefit society or improve the human condition.

(30) "Record date" means the date established under §§ 4-33-701 et seq. on which a corporation determines the identity of its members for the purposes of this chapter.

(31) "Religious corporation" means a domestic corporation which is formed as a religious corporation pursuant to §§ 4-33-201 et seq., or is required to be a religious corporation pursuant to § 4-33-1707 for religious purposes.

(32) "Secretary" means the corporate officer to whom the bylaws or the board of directors has delegated responsibility under § 4-33-840(b) for custody of the minutes of the directors' and members' meetings and for authenticating the records of the corporation.

(33) "State," when referring to a part of the United States, includes a state and commonwealth (and their agencies and governmental subdivisions) and a territory, and insular possession (and their agencies and governmental subdivisions) of the United States.

(34) "United States" includes any district, authority, bureau, commission, department, and any other agency of the United States.

(35) "Vote" includes authorization by written ballot and written consent.

(36) "Voting power" means the total number of votes entitled to be cast for the election of directors at the time the determination of voting power is made, excluding a vote which is contingent upon the happening of a condition or event that has not occurred at the time. Where a class is entitled to vote as a class for directors, the determination of voting power of the class shall be based on the percentage of the number of directors the class is entitled to elect out of the total number of authorized directors.

History. Acts 1993, No. 1147, § 140.

4-33-141. Notice.

(a) Notice may be oral or written.

(b) Notice may be communicated in person; by telephone, telegraph, teletype, telecopier, facsimile, or other form of wire or wireless communication; or by mail or private carrier; if these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published; or by radio, television, or other form of public broadcast communication.

(c) Oral notice is effective when communicated, if communicated in a comprehensible manner.

(d) Written notice, if in a comprehensible form, is effective at the earliest of the following:

(1) when received;

(2) five (5) days after its deposit in the United States mail, as evidenced by the postmark, if mailed correctly addressed and with first class postage affixed;

(3) on the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee;

(4) thirty (30) days after its deposit in the United States mail, as evidenced by the postmark, if mailed correctly addressed and with other than first class, registered or certified postage affixed.

(e) Written notice is correctly addressed to a member of a domestic or foreign corporation if addressed to the member's address shown in the corporation's current list of members.

(f) A written notice or report delivered as part of a newsletter, magazine or other publication regularly sent to members shall constitute a written notice or report if addressed or delivered to the member's address shown in the corporation's current list of members, or in the case of members who are residents of the same household and who have the same address in the corporation's current list of members, if addressed or delivered to one (1) of such members, at the address appearing on the current list of members.

(g) Written notice is correctly addressed to a domestic or foreign corporation (authorized to transact business in this state), other than in its capacity as a member, if addressed to its registered agent or to its secretary at its principal office.

(h) If § 4-33-705(b) or any other provision of this chapter prescribes notice requirements for particular circumstances, those requirements govern. If articles or bylaws prescribe notice requirements, not inconsistent with this section or other provisions of this chapter, those requirements govern.

History. Acts 1993, No. 1147, § 141.

4-33-142 — 4-33-149. [Reserved.]**Part E — Private Foundations****4-33-150. Internal revenue section 501(c)(3) — Organizations and private foundations.**

(a) Notwithstanding any provision of Arkansas law or in the articles of incorporation to the contrary, the articles of incorporation of each corporation organized under this chapter which is an exempt charitable, religious, literary, educational, or scientific organization as described in section 501(c)(3) of the Internal Revenue Code of 1986 shall be deemed to contain the following provisions:

“Upon the dissolution of the corporation, the board of directors shall, after paying or making provision for the payment of all of the liabilities of the corporation, dispose of all of the assets of the corporation exclusively for the purposes of the corporation in such manner, or to such charitable, educational, religious, literary, or scientific purposes as shall at the time qualify as an exempt organization or organizations under section 501(c)(3) of the Internal Revenue Code of 1986, or the corresponding provision of any future United States Internal Revenue Law, as the board of trustees shall determine. Any such assets not so disposed of shall be disposed of by the circuit court of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said court shall determine, which are organized and operated exclusively for such purposes.”

(b) Notwithstanding any provision of Arkansas law or in the articles of incorporation to the contrary, the articles of incorporation of each corporation which is subject to this chapter and which is a private foundation as defined in section 509(a) of the Internal Revenue Code of 1986 shall be deemed to contain the following provisions:

(1) Shall distribute such amounts for each taxable year at such time and in such manner as not to subject the corporation to tax under section 4942 of the Code.

(2) Shall not engage in any act of self-dealing as defined in section 4941(d) of the Code.

(3) Shall not retain any excess business holdings as defined in section 4943(c) of the Code.

(4) Shall not make any taxable expenditures as defined in section 4944 of the Code.

(5) Shall not make any taxable expenditures as defined in section 4945(d) of the Code.

(c) The articles of incorporation of any corporation described in subsection (b) of this section may be amended to expressly exclude the application of subsection (b) and in the event of such amendment, subsection (b) shall not apply to that corporation.

All references in this section to sections of the Code shall be to such sections of the Internal Revenue Code of 1986 as amended from time to

time, or to corresponding provisions of subsequent internal revenue laws of the United States.

History. Acts 1993, No. 1147, § 150.

Cross References. Jurisdiction of circuit courts, Ark. Const. Amend. 80, §§ 6, 19.

U.S. Code. The Internal Revenue Code of 1986, referred to in this section, is codified throughout Title 26 of the U.S.

Code: Sections 501(c)(3), 509(a), 4941(d), 4942, 4943(c), 4944 and 4945(d) of the Internal Revenue Code of 1986 are codified as 26 U.S.C. §§ 501(c)(3), 509(a), 4941(d), 4942, 4943(c), 4944 and 4945(d), respectively.

4-33-151 — 4-33-159. [Reserved.]

Part F — Judicial Relief

4-33-160. Judicial relief.

(a) If for any reason it is impractical or impossible for any corporation to call or conduct a meeting of its members, delegates, or directors, or otherwise obtain their consent, in the manner prescribed by its articles, bylaws, or this chapter, then upon petition of a director, officer, delegate, or member, a circuit court sitting in the county of the principal office of the corporation may order that such a meeting be called or that a written ballot or other form of obtaining the vote of members, delegates, or directors be authorized, in such a manner as the court finds fair and equitable under the circumstances.

(b) The court shall, in an order issued pursuant to this section, provide for a method of notice reasonably designed to give actual notice to all persons who would be entitled to notice of a meeting held pursuant to the articles, bylaws and this chapter, whether or not the method results in actual notice to all such persons or conforms to the notice requirements that would otherwise apply. In a proceeding under this section the court may determine who the members or directors are.

(c) The order issued pursuant to this section may dispense with any requirement relating to the holding of or voting at meetings or obtaining votes, including any requirement as to quorums or as to the number or percentage of votes needed for approval, that would otherwise be imposed by the articles, bylaws, or this chapter.

(d) Whenever practical any order issued pursuant to this section shall limit the subject matter of meetings or other forms of consent authorized to items, including amendments to the articles or bylaws, the resolution of which will or may enable the corporation to continue managing its affairs without further resort to this section; provided, however, that an order under this section may also authorize the obtaining of whatever votes and approvals are necessary for the dissolution, merger or sale of assets.

(e) Any meeting or other method of obtaining the vote of members, delegates, or directors conducted pursuant to an order issued under this section, and that complies with all the provisions of such order, is for all purposes a valid meeting or vote, as the case may be, and shall have the

same force and effect as if it complied with every requirement imposed by the articles, bylaws and this chapter.

History. Acts 1993, No. 1147, § 160.

Cross References. Jurisdiction of cir-

cuit courts, Ark. Const. Amend. 80, §§ 6, 19.

4-33-161 — 4-33-169. [Reserved.]

Part G — Attorney General

4-33-170 — 4-33-179. [Reserved.]

Part H — Religious Corporations — Constitutional Protections

4-33-180. Religious corporations — Constitutional protections.

If religious doctrine governing the affairs of a religious corporation is inconsistent with the provisions of this chapter on the same subject, the religious doctrine shall control to the extent required by the Constitution of the United States or the constitution of this state or both.

History. Acts 1993, No. 1147, § 170.

SUBCHAPTER 2 — ORGANIZATION

SECTION.	SECTION.
4-33-201. Incorporators.	4-33-205. Organization of corporation.
4-33-202. Articles of incorporation.	4-33-206. Bylaws.
4-33-203. Incorporation.	4-33-207. Emergency bylaws and powers.
4-33-204. Liability for preincorporation transactions.	

RESEARCH REFERENCES

Am. Jur. 18A Am. Jur. 2d, Corp., §§ 184, 194, 201 et seq.

C.J.S. 18 C.J.S., Corp., § 44.

4-33-201. Incorporators.

One (1) or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the Secretary of State for filing.

History. Acts 1993, No. 1147, § 201.

4-33-202. Articles of incorporation.

- (a) The articles of incorporation must set forth:
- (1) a corporate name for the corporation that satisfies the requirements of § 4-33-401;

(2) one (1) of the following statements:

- (i) this corporation is a public benefit corporation;
- (ii) this corporation is a mutual benefit corporation; and
- (iii) this corporation is a religious corporation.

(3) the street address of the corporation's initial registered office and the name of its initial registered agent at that office;

(4) the name and address of each incorporator;

(5) whether or not the corporation will have members; and

(6) provisions not inconsistent with law regarding the distribution of assets on dissolution.

(b) The articles of incorporation may set forth:

(1) the purpose or purposes for which the corporation is organized, which may be, either alone or in combination with other purposes, the transaction of any lawful activity;

(2) the names and addresses of the individuals who are to serve as the initial directors;

(3) provisions not inconsistent with law regarding:

(i) managing and regulating the affairs of the corporation;

(ii) defining, limiting, and regulating the powers of the corporation, its board of directors and members (or any class of members); and

(iii) the characteristics, qualifications, rights, limitations and obligations attaching to each or any class of members.

(4) any provision that under this chapter is required or permitted to be set forth in the bylaws.

(c) Each incorporator named in the articles must sign the articles.

(d) The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.

History. Acts 1993, No. 1147, § 202.

4-33-203. Incorporation.

(a) Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed.

(b) The Secretary of State's filing of the articles of incorporation is conclusive proof that the incorporation satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

History. Acts 1993, No. 1147, § 203.

4-33-204. Liability for preincorporation transactions.

All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under this chapter, are jointly and severally liable for all liabilities created while so acting.

History. Acts 1993, No. 1147, § 204.

4-33-205. Organization of corporation.

(a) After incorporation:

(1) if initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting;

(2) if initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

(i) to elect directors and complete the organization of the corporation; or

(ii) to elect a board of directors who shall complete the organization of the corporation.

(b) Action required or permitted by this chapter to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one (1) or more written consents describing the action taken and signed by each incorporator.

(c) An organizational meeting may be held in or out of this state in accordance with § 4-33-820.

History. Acts 1993, No. 1147, § 205.

4-33-206. Bylaws.

(a) The incorporators or board of directors of a corporation shall adopt bylaws for the corporation.

(b) The bylaws may contain any provision for regulating and managing the affairs of the corporation that is not inconsistent with law or the articles of incorporation.

History. Acts 1993, No. 1147, § 206.

4-33-207. Emergency bylaws and powers.

(a) Unless the articles provide otherwise the directors of a corporation may adopt, amend or repeal bylaws to be effective only in an emergency defined in subsection (d) of this section. The emergency bylaws, which are subject to amendment or repeal by the members, may provide special procedures necessary for managing the corporation during the emergency, including:

(1) how to call a meeting of the board;

(2) quorum requirements for the meeting; and

(3) designation of additional or substitute directors.

(b) All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

(c) Corporate action taken in good faith in accordance with the emergency bylaws:

- (1) binds the corporation; and
- (2) may not be used to impose liability on a corporate director, officer, employee, or agent.

(d) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

History. Acts 1993, No. 1147, § 207.

SUBCHAPTER 3 — PURPOSES AND POWERS

SECTION.

4-33-301. Purposes.

4-33-302. General powers.

SECTION.

4-33-303. Emergency powers.

4-33-304. Ultra vires.

RESEARCH REFERENCES

C.J.S. 18 C.J.S., Corp., § 28.

19 C.J.S., Corp., § 560.

4-33-301. Purposes.

(a) Every corporation incorporated under this chapter has the purpose of engaging in any lawful activity unless a more limited purpose is set forth in the articles of incorporation.

(b) A corporation engaging in an activity that is subject to regulation under another statute of this state may incorporate under this chapter only if incorporation under this chapter is not prohibited by the other statute. The corporation shall be subject to all limitations of the other statute.

History. Acts 1993, No. 1147, § 301.

4-33-302. General powers.

Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its affairs including, without limitation, power:

- (1) to sue and be sued, complain and defend in its corporate names;
- (2) to have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing or in any other manner reproducing it;

- (3) to make and amend bylaws not inconsistent with its articles of incorporation or with the laws of this state, for regulating and managing the affairs of the corporation;

- (4) to purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;

(5) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

(6) to purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with, shares or other interests in, or obligations of any entity;

(7) to make contracts and guaranties, incur liabilities, borrow money, issue notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;

(8) to lend money, invest and revest its funds, and receive and hold real and personal property as security for repayment, except as limited by § 4-33-832;

(9) to be a promoter, partner, member, associate or manager of any partnership, joint venture, trust or other entity;

(10) to conduct its activities, locate offices, and exercise the powers granted by this chapter within or without this state;

(11) to elect or appoint directors, officers, employees, and agents of the corporation, define their duties, and fix their compensation;

(12) to pay pensions and establish pension plans, pension trusts, and other benefit and incentive plans for any or all of its current or former directors, officers, employees, and agents;

(13) to make donations not inconsistent with law for the public welfare or for charitable, religious, scientific, or educational purposes and for other purposes that further the corporate interest;

(14) to impose dues, assessments, admission and transfer fees upon its members;

(15) to establish conditions for admission of members, admit members and issue memberships;

(16) to carry on a business;

(17) to serve as a trustee of a trust in which it or an entity affiliated by common program or purpose has a beneficial interest; and

(18) to do all things necessary or convenient, not inconsistent with law, to further the activities and affairs of the corporation.

History. Acts 1993, No. 1147, § 302.

4-33-303. Emergency powers.

(a) In anticipation of or during an emergency defined in subsection (d) of this section, the board of directors of a corporation may:

(1) modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and

(2) relocate the principal office, designate alternative principal offices or regional offices, or authorize the officer to do so.

(b) During an emergency defined in subsection (d) of this section, unless emergency bylaws provide otherwise:

(1) notice of a meeting of the board of directors need be given only to those directors it is practicable to reach and may be given in any practicable manner, including by publication and radio; and

(2) one (1) or more officers of the corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

(c) Corporate action taken in good faith during an emergency under this section to further the ordinary affairs of the corporation:

(1) binds the corporation; and

(2) may not be used to impose liability on a corporate director, officer, employee, or agent.

(d) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

History. Acts 1993, No. 1147, § 303.

4-33-304. Ultra vires.

(a) Except as provided in subsection (b) of this section, the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

(b) A corporation's power to act may be challenged in a proceeding against the corporation to enjoin an act where a third party has not acquired rights. The proceeding may be brought by the Attorney General, a director, or by a member or members in a derivative proceeding.

(c) A corporation's power to act may be challenged in a proceeding against an incumbent or former director, officer, employee or agent of the corporation. The proceeding may be brought by a director, the corporation, directly, derivatively, or through a receiver, a trustee or other legal representative, or in the case of a public benefit corporation, by the Attorney General.

History. Acts 1993, No. 1147, § 304.

SUBCHAPTER 4 — NAMES

SECTION.

4-33-401. Corporate name.

4-33-402. Reserved name.

SECTION.

4-33-403. Registered name.

RESEARCH REFERENCES

Am. Jur. 18A Am. Jur. 2d, Corp., §§ 201, 289, 292, 343. **C.J.S.** 18 C.J.S., Corp., § 100.

4-33-401. Corporate name.

(a) A corporate name may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by § 4-33-301 and its articles of incorporation.

(b) Except as authorized by subsections (c) and (d) of this section, a corporate name must be distinguishable upon the records of the Secretary of State from:

(1) the corporate name of a nonprofit or business corporation incorporated or authorized to do business in this state;

(2) a corporate name reserved or registered under § 4-33-402 or § 4-33-403 of this chapter or § 4-26-402 or § 4-27-402; or

(3) the fictitious name of a foreign business or nonprofit corporation authorized to transact business in this state because its real name is unavailable;

(c) A corporation may apply to the Secretary of State for authorization to use a name that is not distinguishable upon the Secretary of State's records from one (1) or more of the names described in subsection (b) of this section. The Secretary of State shall authorize use of the name applied for if;

(1) the other corporation consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying corporation; or

(2) the applicant delivers to the Secretary of State a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(d) A corporation may use the name (including the fictitious name) of another domestic or foreign business or nonprofit corporation that is used in this state if the other corporation is incorporated or authorized to do business in this state and the proposed user corporation:

(1) has merged with the other corporation;

(2) has been formed by reorganization of the other corporation; or

(3) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(e) This chapter does not control the use of fictitious names.

History. Acts 1993, No. 1147, § 401.

4-33-402. Reserved name.

(a) A person may reserve the exclusive use of a corporate name, including a fictitious name for a foreign corporation whose corporate name is not available by delivering an application to the Secretary of State for filing. Upon finding that the corporate name applied for is available, the Secretary of State shall reserve the name for the applicant's exclusive use for a nonrenewable one hundred twenty-day period.

(b) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the Secretary of State a

signed notice of the transfer that states the name and address of the transferee.

History. Acts 1993, No. 1147, § 402.

4-33-403. Registered name.

(a) A foreign corporation may register its corporate name, or its corporate name with any change required by § 4-33-1506, if the name is distinguishable upon the records of the Secretary of State from:

(1) the corporate name of a nonprofit or business corporation incorporated or authorized to do business in this state; and

(2) a corporate name reserved under § 4-33-402 or § 4-26-402 or § 4-27-402 or registered under this section.

(b) A foreign corporation registers its corporate name, or its corporate name with any change required by § 4-33-1506 by delivering to the Secretary of State an application:

(1) setting forth its corporate name, or its corporate name with any change required by § 4-33-1506, the state or country and date of its incorporation, and a brief description of the nature of the activities in which it is engaged; and

(2) accompanied by a certificate of existence (or a document of similar import) from the state or country of incorporation.

(c) The name is registered for the applicant's exclusive use upon the effective date of the application.

(d) A foreign corporation whose registration is effective may renew it for successive years by delivering to the Secretary of State for filing a renewal application, which complies with the requirements of subsection (b) of this section, between October 1 and December 31 of the preceding year. The renewal application renews the registration for the following calendar year.

(e) A foreign corporation whose registration is effective may thereafter qualify as a foreign corporation under that name or consent in writing to the use of that name by a corporation thereafter incorporated under this chapter or by another foreign corporation thereafter authorized to transact business in this state. The registration terminates when the domestic corporation is incorporated or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

History. Acts 1993, No. 1147, § 403.

SUBCHAPTER 5 — OFFICE AND AGENT

SECTION.

4-33-501. Registered office and registered agent.

4-33-502. Change of registered office or registered agent.

SECTION.

4-33-503. Resignation of registered agent.

4-33-504. Service on corporation.

4-33-501. Registered office and registered agent.

Each corporation must continuously maintain in this state:

(1) a registered office with the same address as that of the registered agent; and

(2) a registered agent, who may be:

(i) an individual who resides in this state and whose office is identical with the registered office;

(ii) a domestic business or nonprofit corporation whose office is identical with the registered office; or

(iii) a foreign business or nonprofit corporation authorized to transact business in this state whose office is identical with the registered office.

History. Acts 1993, No. 1147, § 501.

4-33-502. Change of registered office or registered agent.

(a) A corporation may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:

(1) the name of the corporation;

(2) the street address of its current registered office;

(3) if the current registered office is to be changed, the street address of the new registered office;

(4) the name of its current registered agent;

(5) if the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent (either on the statement or attached to it) to the appointment; and

(6) that after the change or changes are made, the street addresses of its registered office and the office of its registered agent will be identical.

(b) If the street address of a registered agent's office is changed, the registered agent may change the street address of the registered office of any corporation for which the registered agent is the registered agent by notifying the corporation in writing of the change and by signing (either manually or in facsimile) and delivering to the Secretary of State for filing a statement that complies with the requirements of subsection (a) of this section and recites that the corporation has been notified of the change.

History. Acts 1993, No. 1147, § 502.

4-33-503. Resignation of registered agent.

(a) A registered agent may resign as registered agent by signing and delivering to the Secretary of State the original and two (2) exact or conformed copies of a statement of resignation. The statement may include a statement that the registered office is also discontinued.

(b) After filing the statement the Secretary of State shall mail one copy to the registered office (if not discontinued) and the other copy to the corporation at its principal office, if known. Service is perfected under this subsection on the earliest of:

- (1) the date the corporation receives the mail;
- (2) the date shown on the return receipt, if signed on behalf of the corporation; or
- (3) five (5) days after its deposit in the United States mail, if mailed and correctly addressed with first class postage affixed.

(c) The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

History. Acts 1993, No. 1147, § 503.

4-33-504. Service on corporation.

(a) A corporation's registered agent is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation.

(b) If a corporation has no registered agent, or the agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office, if known, and such service is perfected under this section on the earliest of:

- (1) the date the corporation receives the mail;
- (2) the date shown on the return receipt, if signed on behalf of the corporation; or
- (3) five (5) days after its deposit in the United States mail, if mailed and correctly addressed with first class postage affixed.

(c) This section does not prescribe the only means, or necessarily the required means, of serving a corporation.

History. Acts 1993, No. 1147, § 504; 2001, No. 749, § 1.

Amendments. The 2001 amendment, in (b), inserted "and such service is per-

fectured under this section on" in the introductory language and made related changes.

SUBCHAPTER 6 — MEMBERS AND MEMBERSHIP

SECTION.

Part A — Admission of Members

- 4-33-601. Admission.
- 4-33-602. Consideration.
- 4-33-603. No requirement of members.
- 4-33-604 — 4-33-609. [Reserved.]

Part B — Types of Memberships — Members' Rights and Obligations

- 4-33-610. Differences in rights and obligations of members.

SECTION.

- 4-33-611. Transfers.
- 4-33-612. Member's liability to third parties.
- 4-33-613. Member's liability for dues, assessments and fees.
- 4-33-614. Creditor's action against member.
- 4-33-615 — 4-33-619. [Reserved.]

Part C — Resignation and Termination

- 4-33-620. Resignation.

SECTION.	SECTION.
4-33-621. Termination, expulsion and suspension.	Part E — Delegates
4-33-622. Purchase of memberships.	4-33-640. Delegates.
4-33-623 — 4-33-629. [Reserved.]	
Part D — Derivative Suits	
4-33-630 — 4-33-639. [Reserved.]	

Part A — Admission of Members

4-33-601. Admission.

- (a) The articles or bylaws may establish criteria or procedures for admission of members.
- (b) No person shall be admitted as a member without his or her consent.

History. Acts 1993, No. 1147, § 601.

4-33-602. Consideration.

Except as provided in its articles or bylaws, a corporation may admit members for no consideration or for such consideration as is determined by the board.

History. Acts 1993, No. 1147, § 602.

4-33-603. No requirement of members.

A corporation is not required to have members.

History. Acts 1993, No. 1147, § 603.

4-33-604 — 4-33-609. [Reserved.]

Part B — Types of Memberships — Members’ Rights and Obligations

4-33-610. Differences in rights and obligations of members.

All members shall have the same rights and obligations with respect to voting, dissolution, redemption and transfer, unless the articles or bylaws establish classes of membership with different rights or obligations. All members shall have the same rights and obligations with respect to any other matters, except as set forth in or authorized by the articles or bylaws.

History. Acts 1993, No. 1147, § 610.

4-33-611. Transfers.

(a) Except as set forth in or authorized by the articles or bylaws, no member of a mutual benefit corporation may transfer a membership or any right arising therefrom.

(b) No member of a public benefit or religious corporation may transfer a membership or any right arising therefrom.

(c) Where transfer rights have been provided, no restriction on them shall be binding with respect to a member holding a membership issued prior to the adoption of the restriction unless the restriction is approved by the members and the affected member.

History. Acts 1993, No. 1147, § 611.

4-33-612. Member's liability to third parties.

A member of a corporation is not, as such, personally liable for the acts, debts, liabilities, or obligations of the corporation.

History. Acts 1993, No. 1147, § 612.

4-33-613. Member's liability for dues, assessments and fees.

A member may become liable to the corporation for dues, assessments or fees; provided, however, that an article or bylaw provision or a resolution adopted by the board authorizing or imposing dues, assessments or fees does not, of itself, create liability.

History. Acts 1993, No. 1147, § 613.

4-33-614. Creditor's action against member.

(a) No proceeding may be brought by a creditor to reach the liability, if any, of a member to the corporation unless final judgment has been rendered in favor of the creditor against the corporation and execution has been returned unsatisfied in whole or in part or unless such proceeding would be useless.

(b) All creditors of the corporation, with or without reducing their claims to judgment, may intervene in any creditor's proceeding brought under subdivision (a) of this section to reach and apply unpaid amounts due the corporation. Any or all members who owe amounts to the corporation may be joined in such proceeding.

History. Acts 1993, No. 1147, § 614.

4-33-615 — 4-33-619. [Reserved.]**Part C — Resignation and Termination****4-33-620. Resignation.**

(a) A member may resign at any time.

(b) The resignation of a member does not relieve the member from any obligations the member may have to the corporation as a result of obligations incurred or commitments made prior to resignation.

History. Acts 1993, No. 1147, § 620.

4-33-621. Termination, expulsion and suspension.

(a) No member of a public benefit or mutual benefit corporation may be expelled or suspended, and no membership or memberships in such corporations may be terminated or suspended except pursuant to a procedure that is fair and reasonable and is carried out in good faith.

(b) A procedure is fair and reasonable when either:

(1) the articles or bylaws set forth a procedure that provides:

(i) not less than fifteen (15) days prior written notice of the expulsion, suspension or termination and the reasons therefor; and

(ii) an opportunity for the member to be heard, orally or in writing, not less than five (5) days before the effective date of the expulsion, suspension or termination by a person or persons authorized to decide that the proposed expulsion, termination or suspension not take place; or

(2) it is fair and reasonable taking into consideration all of the relevant facts and circumstances.

(c) Any written notice given by mail must be given by first-class or certified mail sent to the last address of the member shown on the corporation's records.

(d) Any proceeding challenging an expulsion, suspension or termination, including a proceeding in which defective notice is alleged, must be commenced within one (1) year after the effective date of the expulsion, suspension or termination.

(e) A member who has been expelled or suspended may be liable to the corporation for dues, assessments or fees as a result of obligations incurred or commitments made prior to expulsion or suspension.

History. Acts 1993, No. 1147, § 621.

4-33-622. Purchase of memberships.

(a) A public benefit or religious corporation may not purchase any of its memberships or any right arising therefrom.

(b) A mutual benefit corporation may purchase the membership of a member who resigns or whose membership is terminated for the amount and pursuant to the conditions set forth in or authorized by its articles or bylaws. No payment shall be made in violation of §§ 4-33-1301 et seq.

History. Acts 1993, No. 1147, § 622.

4-33-623 — 4-33-629. [Reserved.]**Part D — Derivative Suits****4-33-630 — 4-33-639. [Reserved.]****Part E — Delegates****4-33-640. Delegates.**

(a) A corporation may provide in its articles or bylaws for delegates having some or all of the authority of members.

(b) The articles or bylaws may set forth provisions relating to:

(1) the characteristics, qualifications, rights, limitation and obligations of delegates including their selection and removal;

(2) calling, noticing, holding and conducting meetings of delegates; and

(3) carrying on corporate activities during and between meetings of delegates.

History. Acts 1993, No. 1147, § 630.

SUBCHAPTER 7 — MEMBERS' MEETINGS AND VOTING**SECTION.****Part A — Meetings and Action Without Meetings**

4-33-701. Annual and regular meetings.

4-33-702. Special meeting.

4-33-703. Court-ordered meeting.

4-33-704. Action by written consent.

4-33-705. Notice of meeting.

4-33-706. Waiver of notice.

4-33-707. Record date — Determining members entitled to notice and vote.

4-33-708. Action by written ballot.

4-33-709 — 4-33-719. [Reserved.]

Part B — Voting

4-33-720. Members' list for meeting.

SECTION.

4-33-721. Voting entitlement generally.

4-33-722. Quorum requirements.

4-33-723. Voting requirements.

4-33-724. Proxies.

4-33-725. Cumulative voting for directors.

4-33-726. Other methods of electing directors.

4-33-727. Corporation's acceptance of votes.

4-33-728, 4-33-729. [Reserved.]

Part C — Voting Agreements

4-33-730. Voting agreements.

Part A — Meetings and Action Without Meetings**4-33-701. Annual and regular meetings.**

(a) A corporation with members shall hold a membership meeting annually at a time stated in or fixed in accordance with the bylaws.

(b) A corporation with members may hold regular membership meetings at times stated in or fixed in accordance with the bylaws.

(c) Annual and regular membership meetings may be held in or out of this state at the place stated in or fixed in accordance with the

bylaws. If no place is stated in or fixed in accordance with the bylaws, annual and regular meetings shall be held at the corporation's principal office.

(d) At the annual meeting:

(1) The president and chief financial officer shall report on the activities and financial condition of the corporation; and

(2) The members shall consider and act upon such other matters as may be raised consistent with the notice requirements of § 4-33-705.

(e) At regular meetings the members shall consider and act upon such matters as may be raised consistent with the notice requirements of § 4-33-705.

(f) The failure to hold an annual or regular meeting at a time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

History. Acts 1993, No. 1147, § 701.

4-33-702. Special meeting.

(a) A corporation with members shall hold a special meeting of members:

(1) on call of its board or the person or persons authorized to do so by the articles or bylaws; or

(2) except as provided in the articles or bylaws of a religious corporation if the holders of at least five percent (5%) of the voting power of any corporation sign, date, and deliver to any corporate officer one (1) or more written demands for the meeting describing the purpose or purposes for which it is to be held.

(b) The close of business on the thirtieth day before delivery of the demand or demands for a special meeting to any corporate officer is the record date for the purpose of determining whether the five percent (5%) requirement of subsection (a) has been met.

(c) If a notice for a special meeting demanded under subsection (a)(2) of this section is not given pursuant to § 4-33-705 within thirty days after the date the written demand or demands are delivered to a corporate officer, regardless of the requirements of subsection (d) of this section, a person signing the demand or demands may set the time and place of the meeting and give notice pursuant to § 4-33-705.

(d) Special meetings of members may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.

(e) Only those matters that are within the purpose or purposes described in the meeting notice required by § 4-33-705 may be conducted at a special meeting of members.

History. Acts 1993, No. 1147, § 702.

4-33-703. Court-ordered meeting.

(a) The circuit court of the county in which a corporation's principal office (or, if none in this state, its registered office) is located may summarily order a meeting to be held:

(1) on application of any member or other person entitled to participate in an annual or regular meeting, if an annual meeting was not held within the earlier of six (6) months after the end of the corporation's fiscal year or fifteen (15) months after its last annual meeting; or

(2) on application of any member or other person entitled to participate in a regular meeting, if a regular meeting is not held within forty (40) days after the date it was required to be held; or

(3) on application of a member who signed a demand for a special meeting valid under § 4-33-702 or a person or persons entitled to call a special meeting, if:

(i) notice of the special meeting was not given within thirty (30) days after the date the demand was delivered to a corporate officer; or

(ii) the special meeting was not held in accordance with the notice.

(b) The court may fix the time and place of the meeting, specify a record date for determining members entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting (or direct that the votes represented at the meeting constitute a quorum for action on those matters), and enter other orders necessary to accomplish the purpose or purposes of the meeting.

(c) If the court orders a meeting, it may also order the corporation to pay the member's costs (including reasonable counsel fees) incurred to obtain the order.

History. Acts 1993, No. 1147, § 703. cuit courts, Ark. Const. Amend. 80, §§ 6,
Cross References. Jurisdiction of cir- 19.

4-33-704. Action by written consent.

(a) Unless limited or prohibited by the articles or bylaws, action required or permitted by this chapter to be approved by the members may be approved without a meeting of members if the action is approved by members holding at least eighty percent (80%) of the voting power. The action must be evidenced by one (1) or more written consents describing the action taken, signed by those members representing at least eighty percent (80%) of the voting power, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) If not otherwise determined under § 4-33-703 or § 4-33-707, the record date for determining members entitled to take action without a meeting is the date the first member signs the consent under subsection (a) of this section.

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document filed with the Secretary of State.

(d) Written notice of member approval pursuant to this section shall be given to all members who have not signed the written consent. If written notice is required, member approval pursuant to this section shall be effective ten (10) days after such written notice is given.

History. Acts 1993, No. 1147, § 704.

4-33-705. Notice of meeting.

(a) A corporation shall give notice consistent with its bylaws of meetings of members in a fair and reasonable manner.

(b) Any notice that conforms to the requirements of subsection (c) of this section is fair and reasonable, but other means of giving notice may also be fair and reasonable when all the circumstances are considered; provided, however, that notice of matters referred to in subsection (c)(2) of this section must be given as provided in subsection (c) of this section.

(c) Notice is fair and reasonable if:

(1) the corporation notifies its members of the place, date, and time of each annual, regular and special meeting of members no fewer than ten (10) (or if notice is mailed by other than first class or registered mail, thirty (30)) nor more than sixty (60) days before the meeting date;

(2) notice of an annual or regular meeting includes a description of any matter or matters that must be approved by the members under §§ 4-33-831, 4-33-856, 4-33-1003, 4-33-1021, 4-33-1104, 4-33-1202, 4-33-1401, or 4-33-1402; and

(3) notice of a special meeting includes a description of the matter or matters for which the meeting is called.

(d) Unless the bylaws require otherwise, if an annual, regular or special meeting of members is adjourned to a different date, time or place, notice need not be given of the new date, time or place, if the new date, time or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under § 4-33-707, however, notice of the adjourned meeting must be given under this section to the members of record as of the new record date.

(e) When giving notice of an annual, regular or special meeting of members, a corporation shall give notice of a matter a member intends to raise at the meeting if: (1) requested in writing to do so by a person entitled to call a special meeting; and (2) the request is received by the secretary or president of the corporation at least ten (10) days before the corporation gives notice of the meeting.

History. Acts 1993, No. 1147, § 705.

4-33-706. Waiver of notice.

(a) A member may waive any notice required by this chapter, the articles, or bylaws before or after the date and time stated in the notice. The waiver must be in writing, be signed by the member entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) A member's attendance at a meeting:

(1) waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting;

(2) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the member objects to considering the matter when it is presented.

History. Acts 1993, No. 1147, § 706.

4-33-707. Record date — Determining members entitled to notice and vote.

(a) The bylaws of a corporation may fix or provide the manner of fixing a date as the record date for determining the members entitled to notice of a members' meeting. If the bylaws do not fix or provide for fixing such a record date, the board may fix a future date as such a record date. If no such record date is fixed, members at the close of business on the business day preceding the day on which notice is given, or if notice is waived, at the close of business on the business day preceding the day on which the meeting is held, are entitled to notice of the meeting.

(b) The bylaws of a corporation may fix or provide the manner of fixing a date as the record date for determining the members entitled to vote at a members' meeting. If the bylaws do not fix or provide for fixing such a record date, the board may fix a future date as such a record date. If no such record date is fixed, members on the date of the meeting who are otherwise eligible to vote are entitled to vote at the meeting.

(c) The bylaws may fix or provide the manner for determining a date as the record date for the purpose of determining the members entitled to exercise any rights in respect of any other lawful action. If the bylaws do not fix or provide for fixing such a record date, the board may fix in advance such a record date. If no such record date is fixed, members at the close of business on the day on which the board adopts the resolution relating thereto, or the sixtieth day prior to the date of such other action, whichever is later, are entitled to exercise such rights.

(d) A record date fixed under this section may not be more than seventy (70) days before the meeting or action requiring a determination of members occurs.

(e) A determination of members entitled to notice of or to vote at a membership meeting is effective for any adjournment of the meeting unless the board fixes a new date for determining the right to notice or the right to vote, which it must do if the meeting is adjourned to a date more than seventy (70) days after the record date for determining members entitled to notice of the original meeting.

(f) If a court orders a meeting adjourned to a date more than one hundred twenty (120) days after the date fixed for the original meeting, it may provide that the original record date for notice or voting continues in effect or it may fix a new record date for notice or voting.

History. Acts 1993, No. 1147, § 707.

4-33-708. Action by written ballot.

(a) Unless prohibited or limited by the articles or bylaws, any action that may be taken at any annual, regular or special meeting of members may be taken without a meeting if the corporation delivers a written ballot to every member entitled to vote on the matter.

(b) A written ballot shall:

(1) set forth each proposed action; and

(2) provide an opportunity to vote for or against each proposed action.

(c) Approval by written ballot pursuant to this section shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(d) All solicitations for votes by written ballot shall:

(1) indicate the number of responses needed to meet the quorum requirements;

(2) state the percentage of approvals necessary to approve each matter other than election of directors; and

(3) specify the time by which a ballot must be received by the corporation in order to be counted.

(e) Except as otherwise provided in the articles or bylaws, a written ballot may not be revoked.

History. Acts 1993, No. 1147, § 708.

4-33-709 — 4-33-719. [Reserved.]

Part B — Voting

4-33-720. Members' list for meeting.

(a) After fixing a record date for a notice of a meeting, a corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of the meeting. The list must show the address and number of votes each member is entitled to vote at the meeting. The corporation shall prepare on a current basis through the time of the membership meeting a list of members, if any, who are entitled to vote at the meeting, but not entitled to notice of the meeting. This list shall be prepared on the same basis and be part of the list of members.

(b) The list of members must be available for inspection by any member for the purpose of communication with other members concerning the meeting, beginning two (2) business days after notice is given of the meeting for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a reasonable place identified in the meeting notice in the city where the

meeting will be held. A member, a member's agent, or attorney is entitled on written demand to inspect and, subject to the limitations of subsection (d) of this section, to copy the list, at a reasonable time and at the member's expense, during the period it is available for inspection.

(c) The corporation shall make the list of members available at the meeting, and any member, a member's agent, or attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(d) Without consent of the board, a membership list or any part thereof may not be obtained or used by any person for any purpose unrelated to a member's interest as a member. Without limiting the generality of the foregoing, or without the consent of the board a membership list or any part thereof may not be:

(1) used to solicit money or property unless such money or property will be used solely to solicit the votes of the members in an election to be held by the corporation;

(2) used for any commercial purpose; or

(3) sold to or purchased by any person.

(e) The articles or bylaws of a religious corporation may limit or abolish the rights of a member under this section to inspect and copy any corporate record.

History. Acts 1993, No. 1147, § 720.

4-33-721. Voting entitlement generally.

(a) Unless the articles or bylaws provide otherwise, each member is entitled to one (1) vote on each matter voted on by the members. When more than one (1) membership is held by a single entity, the member shall be entitled to one (1) vote for each such membership.

(b) Unless the articles or bylaws provide otherwise, if a membership stands of record in the names of two (2) or more persons, their acts with respect to voting shall have the following effect:

(1) If only one (1) votes, such act binds all; and

(2) If more than one (1) votes, the vote shall be divided on a prorata basis.

History. Acts 1993, No. 1147, § 721.

4-33-722. Quorum requirements.

(a) Unless this chapter, the articles, or bylaws provide for a higher or lower quorum, ten percent (10%) of the votes entitled to be cast on a matter must be represented at a meeting of members to constitute a quorum on that matter.

(b) A bylaw amendment to decrease the quorum for any member action may be approved by the members or, unless prohibited by the bylaws, by the board.

(c) A bylaw amendment to increase the quorum required for any member action must be approved by the members.

(d) Unless one-third ($\frac{1}{3}$) or more of the voting power is present in person or by proxy, the only matters that may be voted upon at an annual or regular meeting of members are those matters that are described in the meeting notice.

History. Acts 1993, No. 1147, § 722.

4-33-723. Voting requirements.

(a) Unless this chapter, the articles, or the bylaws require a greater vote or voting by class, if a quorum is present, the affirmative vote of the votes represented and voting (which affirmative votes also constitute a majority of the required quorum) is the act of the members.

(b) A bylaw amendment to increase or decrease the vote required for any member action must be approved by the members.

History. Acts 1993, No. 1147, § 723.

4-33-724. Proxies.

(a) Unless the articles or bylaws prohibit or limit proxy voting, a member may appoint a proxy to vote or otherwise act for the member by signing an appointment form either personally or by an attorney-in-fact.

(b) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for eleven (11) months unless a different period is expressly provided in the appointment form; provided however that no proxy shall be valid for more than three (3) years from its date of execution.

(c) An appointment of a proxy is revocable by the member.

(d) The death or incapacity of the member appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises authority under the appointment.

(e) Appointment of a proxy is revoked by the person appointing the proxy:

(1) attending any meeting and voting in person; or

(2) signing and delivering to the secretary or other officer or agent authorized to tabulate proxy votes either a writing stating that the appointment of the proxy is revoked or a subsequent appointment form.

(f) Subject to § 4-33-727 and any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the member making the appointment.

History. Acts 1993, No. 1147, § 724.

4-33-725. Cumulative voting for directors.

(a) If the articles or bylaws provide for cumulative voting by members, members may so vote, by multiplying the number of votes the members are entitled to cast by the number of directors for whom they are entitled to vote, and cast the product for a single candidate or distribute the product among two (2) or more candidates.

(b) Cumulative voting is not authorized at a particular meeting unless:

(1) the meeting notice or statement accompanying the notice states that cumulative voting will take place; or

(2) a member gives notice during the meeting and before the vote is taken of the member's intent to cumulate votes, and if one (1) member gives this notice all other members participating in the election are entitled to cumulate their votes without giving further notice.

(c) A director elected by cumulative voting may be removed by the members without cause if the requirements of § 4-33-808 are met unless the votes cast against removal, or not consenting in writing in such removal, would be sufficient to elect such director if voted cumulatively at an election at which the same total number of votes were cast (or, if such action is taken by written ballot, all memberships entitled to vote were voted) and the entire number of directors authorized at the time of the director's most recent election were then being elected.

(d) Members may not cumulatively vote if the directors and members are identical.

History. Acts 1993, No. 1147, § 725.

4-33-726. Other methods of electing directors.

A corporation may provide in its articles or bylaws for election of directors by members or delegates: (1) on the basis of chapter or other organizational unit; (2) by region or other geographic unit; (3) by preferential voting; or (4) by any other reasonable method.

History. Acts 1993, No. 1147, § 726.

4-33-727. Corporation's acceptance of votes.

(a) If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a member, the corporation if acting in good faith is entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member.

(b) If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the record name of a member, the corporation if acting in good faith is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member if:

(1) the member is an entity and the name signed purports to be that of an officer or agent of the entity;

(2) the name signed purports to be that of an attorney-in-fact of the member and if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the member has been presented with respect to the vote, consent, waiver, or proxy appointment;

(3) two (2) or more persons hold the membership as cotenants or fiduciaries and the name signed purports to be the name of at least one (1) of the coholders and the person signing appears to be acting on behalf of all the coholders; and

(4) in the case of a mutual benefit corporation:

(i) the name signed purports to be that of an administrator, executor, guardian, or conservator representing the member and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;

(ii) the name signed purports to be that of a receiver or trustee in bankruptcy of the member, and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment.

(c) The corporation is entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the member.

(d) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section are not liable in damages to the member for the consequences of the acceptance or rejection.

(e) Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

History. Acts 1993, No. 1147, § 727.

4-33-728, 4-33-729. [Reserved.]

Part C — Voting Agreements

4-33-730. Voting agreements.

(a) Two (2) or more members may provide for the manner in which they will vote by signing an agreement for that purpose. Such agreements may be valid for a period of up to ten (10) years. For public benefit corporations such agreements must have a reasonable purpose not inconsistent with the corporation's public or charitable purposes.

(b) A voting agreement created under this section is specifically enforceable.

History. Acts 1993, No. 1147, § 730.

SUBCHAPTER 8 — DIRECTORS AND OFFICERS

SECTION.

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- 4-33-801. Requirement for and duties of board.
- 4-33-802. Qualification of directors.
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- 4-33-840. Required officers.
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- 4-33-850. Part definitions.
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- 4-33-854. Court-ordered indemnification.
- 4-33-855. Determination and authorization of indemnification.
- 4-33-856. Indemnification of officers, employees and agents.
- 4-33-857. Insurance.
- 4-33-858. Application of part.

RESEARCH REFERENCES

Am. Jur. 18A Am. Jur. 2d, Corp., §§ 184, 201. 18B Am. Jur. 2d, Corp., §§ 1490, 1519, 1994.

Part A — Board of Directors

4-33-801. Requirement for and duties of board.

- (a) Each corporation must have a board of directors.
- (b) Except as provided in this chapter or subsection (c) of this section, all corporate powers shall be exercised by or under the authority of, and the affairs of the corporation managed under the direction of, its board.

(c) The articles may authorize a person or persons to exercise some or all of the powers which would otherwise be exercised by a board. To the extent so authorized any such person or persons shall have the duties and responsibilities of the directors, and the directors shall be relieved to that extent from such duties and responsibilities.

History. Acts 1993, No. 1147, § 801.

CASE NOTES

Cited: Rogers v. Tudor Ins. Co., 325 Ark. 226, 925 S.W.2d 395 (1996).

4-33-802. Qualification of directors.

All directors must be individuals. The articles or bylaws may prescribe other qualifications for directors.

History. Acts 1993, No. 1147, § 802.

4-33-803. Number of directors.

(a) A board of directors must consist of three (3) or more individuals, with the number specified in or fixed in accordance with the articles or bylaws.

(b) The number of directors may be increased or decreased (but to no fewer than three (3)) from time to time by amendment to or in the manner prescribed in the articles or bylaws.

History. Acts 1993, No. 1147, § 803.

4-33-804. Election, designation and appointment of directors.

(a) If the corporation has members, all the directors (except the initial directors) shall be elected at the first annual meeting of members, and at each annual meeting thereafter, unless the articles or bylaws provide some other time or method of election, or provide that some of the directors are appointed by some other person or are designated. Designation occurs when the articles or bylaws name an individual as a director or designate the holder of some office or position as a director.

(b) If the corporation does not have members, all the directors (except the initial directors) shall be elected, appointed or designated as provided in the articles or bylaws. If no method of designation or appointment is set forth in the articles or bylaws, the directors (other than the initial directors) shall be elected by the board.

History. Acts 1993, No. 1147, § 804.

4-33-805. Terms of directors generally.

(a) The articles or bylaws must specify the term of directors. Except for designated or appointed directors, the terms of directors may not exceed the lesser of six (6) years or the stated duration of the corporation. In the absence of any term specified in the articles or bylaws, the term of each director shall be one (1) year. Directors may be elected for successive terms, unless otherwise provided in the articles or bylaws.

(b) A decrease in the number of directors or term of office does not shorten an incumbent director's term.

(c) Except as provided in the articles or bylaws:

(1) the term of a director filling a vacancy in the office of a director elected by members expires at the next election of directors by members; and

(2) the term of a director filling any other vacancy expires at the end of the unexpired term that such director is filling.

(d) Despite the expiration of a director's term, the director continues to serve until the director's successor is elected, designated or appointed and qualifies, or until there is a decrease in the number of directors.

History. Acts 1993, No. 1147, § 805.

4-33-806. Staggered terms for directors.

The articles or bylaws may provide for staggering the terms of directors by dividing the total number of directors into groups. The terms of office of the several groups need not be uniform.

History. Acts 1993, No. 1147, § 806.

4-33-807. Resignation of directors.

(a) A director may resign at any time by delivering written notice to the board of directors, its presiding officer or to the president or secretary.

(b) A resignation is effective when the notice is effective unless the notice specifies a later effective date. If a resignation is made effective at a later date, the board may fill the pending vacancy before the effective date if the board provides that the successor does not take office until the effective date.

History. Acts 1993, No. 1147, § 807.

4-33-808. Removal of directors elected by members or directors.

(a) The members may remove one (1) or more directors elected by them without cause.

(b) If a director is elected by a class, chapter or other organizational unit or by region or other geographic grouping, the director may be removed only by the members of that class, chapter, unit or grouping.

(c) Except as provided in subsection (i) of this section, a director may be removed under subsection (a) of this section or (b) of this section only if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect directors.

(d) If cumulative voting is authorized, a director may not be removed if the number of votes, or if the director was elected by a class, chapter, unit or grouping of members, the number of votes of that class, chapter, unit or grouping, sufficient to elect the director under cumulative voting is voted against the director's removal.

(e) A director elected by members may be removed by the members only at a meeting called for the purpose of removing the director and the meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the director.

(f) In computing whether a director is protected from removal under subsections (b)-(d) of this section, it should be assumed that the votes against removal are cast in an election for the number of directors of the class to which the director to be removed belonged on the date of that director's election.

(g) An entire board of directors may be removed under subsections (a)-(e) of this section.

(h) A director elected by the board may be removed without cause by the vote of a majority of the directors present at a meeting which is called for the purpose of removing the director and for which the meeting notice stated that the purpose, or one of the purposes, of the meeting is removal of the director, or by the vote of such greater number as is set forth in the articles or bylaws; provided, however, that a director elected by the board to fill the vacancy of a director elected by the members may be removed without cause by the members, but not the board.

(i) If, at the beginning of a director's term on the board, the articles or bylaws provide that the director may be removed for missing a specified number of board meetings, the board may remove the director for failing to attend the specified number of meetings. The director may be removed only if a majority of the directors present at a meeting which is called for the purpose of removing the director and for which the meeting notice stated that the purpose, or one of the purposes, of the meeting is removal of the director, vote for the removal.

(j) The articles or bylaws of a religious corporation may:

(1) limit the application of this section; and

(2) set forth the vote and procedures by which the board or any person may remove with or without cause a director elected by the members or the board.

History. Acts 1993, No. 1147, § 808.

4-33-809. Removal of designated or appointed directors.

(a) A designated director may be removed by an amendment to the articles or bylaws deleting or changing the designation.

(b) Appointed directors:

(1) Except as otherwise provided in the articles or bylaws, an appointed director may be removed without cause by the person appointing the director;

(2) The person removing the director shall do so by giving written notice of the removal to the director and either the presiding officer of the board or the corporation's president or secretary; and

(3) A removal is effective when the notice is effective unless the notice specifies a future effective date.

History. Acts 1993, No. 1147, § 809.

4-33-810. Removal of directors by judicial proceeding.

(a) The circuit court of the county where a corporation's principal office is located may remove any director of the corporation from office in a proceeding commenced either by the corporation or its members holding at least ten percent (10%) of the voting power of any class, if the court finds that (1) the director engaged in fraudulent or dishonest conduct, or gross abuse of authority or discretion, with respect to the corporation, or a final judgment has been entered finding that the director has violated a duty set forth in §§ 4-33-830 — 4-33-833, and (2) removal is in the best interest of the corporation.

(b) The court that removes a director may bar the director from serving on the board for a period prescribed by the court.

(c) The articles or bylaws of a religious corporation may limit or prohibit the application of this section.

History. Acts 1993, No. 1147, § 810. **Cross References.** Jurisdiction of circuit courts, Ark. Const. Amend. 80, §§ 6, 19.

4-33-811. Vacancy on board.

(a) Unless the articles or bylaws provide otherwise, and except as provided in subsections (b) and (c) of this section, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(1) the members, if any, may fill the vacancy; if the vacant office was held by a director elected by a class, chapter or other organizational unit or by region or other geographic grouping, only members of the class, chapter, unit or grouping are entitled to vote to fill the vacancy if it is filled by the members;

(2) the board of directors may fill the vacancy; or

(3) if the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(b) Unless the articles or bylaws provide otherwise, if a vacant office was held by an appointed director, only the person who appointed the director may fill the vacancy.

(c) If a vacant office was held by a designated director, the vacancy shall be filled as provided in the articles or bylaws. In the absence of an applicable article or bylaw provision, the vacancy may not be filled by the board.

(d) A vacancy that will occur at a specific later date (by reason of a resignation effective at a later date under § 4-33-807(b) or otherwise) may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

History. Acts 1993, No. 1147, § 811.

4-33-812. Compensation of directors.

Unless the articles or bylaws provide otherwise, a board of directors may fix the compensation of directors.

History. Acts 1993, No. 1147, § 812.

4-33-813 — 4-33-819. [Reserved.]

Part B — Meetings and Action of the Board

4-33-820. Regular and special meetings.

(a) If the time and place of a directors' meeting is fixed by the bylaws or the board, the meeting is a regular meeting. All other meetings are special meetings.

(b) A board of directors may hold regular or special meetings in or out of this state.

(c) Unless the articles or bylaws provide otherwise, a board may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

History. Acts 1993, No. 1147, § 820.

4-33-821. Action without meeting.

(a) Unless the articles or bylaws provide otherwise, action required or permitted by this chapter to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one (1) or more written consents describing the action taken, signed by each director, and included in the minutes filed with the corporate records reflecting the action taken.

(b) Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date.

(c) A consent delivered by facsimile transmittal shall constitute a valid signed consent under this section.

(d) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

History. Acts 1993, No. 1147, § 821.

4-33-822. Call and notice of meetings.

(a) Unless the articles, bylaws or subsection (c) of this section provide otherwise, regular meetings of the board may be held without notice.

(b) Unless the articles, bylaws or subsection (c) of this section provide otherwise, special meetings of the board must be preceded by at least two (2) days' notice to each director of the date, time, and place, but not the purpose, of the meeting.

(c) In corporations without members any board action to remove a director or to approve a matter that would require approval by the members if the corporation had members, shall not be valid unless each director is given at least seven (7) days' written notice that the matter will be voted upon at a directors' meeting or unless notice is waived pursuant to § 4-33-823.

(d) Unless the articles or bylaws provide otherwise, the presiding officer of the board, the president or twenty percent (20%) of the directors then in office may call and give notice of a meeting of the board.

History. Acts 1993, No. 1147, § 822.

4-33-823. Waiver of notice.

(a) A director may at any time waive any notice required by this chapter, the articles or bylaws. Except as provided in subsection (b) of this section, the waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes of the corporate records. A signed waiver delivered by facsimile transmittal shall constitute a valid waiver of notice under this section.

(b) A director's attendance at or participation in a meeting waives any required notice of the meeting unless the director upon arriving at the meeting or prior to the vote on a matter not noticed in conformity with this chapter, the articles or bylaws objects to lack of notice and does not thereafter vote for or assent to the objected to action.

History. Acts 1993, No. 1147, § 823.

4-33-824. Quorum and voting.

(a) Except as otherwise provided in this chapter, the articles or bylaws, a quorum of a board of directors consists of a majority of the directors in office immediately before a meeting begins.

(b) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board unless this chapter, the articles or bylaws require the vote of a greater number of directors.

History. Acts 1993, No. 1147, § 824.

4-33-825. Committees of the board.

(a) Unless prohibited or limited by the articles or bylaws, a board of directors may create one (1) or more committees of the board and appoint members of the board to serve on them. Each committee shall have two (2) or more directors, who serve at the pleasure of the board.

(b) The creation of a committee and appointment of members to it must be approved by the greater of:

(1) a majority of a quorum of the directors when the action is taken; or

(2) the number of directors required by the articles or bylaws to take action under § 4-33-824.

(c) Sections 4-33-820 — 4-33-824, which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board, apply to committees of the board and their members as well.

(d) To the extent specified by the board of directors or in the articles or bylaws, each committee of the board may exercise the board's authority under § 4-33-801.

(e) A committee of the board may not, however:

(1) authorize distributions;

(2) approve or recommend to members dissolution, merger or the sale, pledge or transfer of all or substantially all of the corporation's assets;

(3) elect, appoint or remove directors or fill vacancies on the board or on any of its committees; or

(4) adopt, amend or repeal the articles or bylaws.

(f) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in § 4-33-830.

History. Acts 1993, No. 1147, § 825.

4-33-826 — 4-33-829. [Reserved.]

Part C — Standards of Conduct

4-33-830. General standards for directors.

(a) A director shall discharge his or her duties as a director, including his or her duties as a member of a committee:

(1) in good faith;

(2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(3) in a manner the director reasonably believes to be in the best interests of the corporation.

(b) In discharging his or her duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(1) one (1) or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(2) legal counsel, public accountants or other persons as to matters the director reasonably believes are within the person's professional or expert competence;

(3) a committee of the board of which the director is not a member, as to matters within its jurisdiction, if the director reasonably believes the committee merits confidence; or

(4) in the case of religious corporations, religious authorities and ministers, priests, rabbis or other persons whose position or duties in the religious organization the director believes justify reliance and confidence and whom the director believes to be reliable and competent in the matters presented.

(c) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) of this section unwarranted.

(d) A director is not liable to the corporation, any member, or any other person for any action taken or not taken as a director, if the director acted in compliance with this section.

(e) A director shall not be deemed to be a trustee with respect to the corporation or with respect to any property held or administered by the corporation, including without limit, property that may be subject to restrictions imposed by the donor or transferor of such property.

History. Acts 1993, No. 1147, § 830.

4-33-831. Director conflict of interest.

(a) A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction is not voidable or the basis for imposing liability on the director if any of the following is true:

(1) the transaction was fair to the corporation at the time it was entered into;

(2) the material facts of the transaction and the director's interest were disclosed or known to the board of directors and the board authorized, approved, or ratified the transaction; or

(3) the material facts of the transaction and the director's interest were disclosed or known to the members and they authorized, approved, or ratified the transaction.

(b) For purposes of this section, a director of the corporation has an indirect interest in a transaction if (1) another entity in which the director has a material interest or in which the director is a general partner is a party to the transaction or (2) another entity of which the director is a director, officer, or trustee is a party to the transaction.

(c) For purposes of subsection (a)(2) of this section a conflict of interest transaction is authorized, approved, or ratified, if it receives the affirmative vote of a majority of the directors on the board, who have no direct or indirect interest in the transaction, but a transaction may not be authorized, approved, or ratified under this section by less than a majority of the entire board of directors.

(d) For purposes of subsection (a)(3) of this section, a conflict of interest transaction is authorized, approved, or ratified by the members if it receives a majority of the votes entitled to be counted under this subsection. Votes cast by or voted under the control of a director who has a direct or indirect interest in the transaction, and votes cast by or voted under the control of an entity described in subsection (b)(1) of this section, may not be counted in a vote of members to determine whether to authorize, approve, or ratify a conflict of interest transaction under subsection (a)(3) of this section. The vote of these members, however, is counted in determining whether the transaction is approved under other sections of this chapter. A majority of the voting power, whether or not present, that are entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

(e) The articles, bylaws, or a resolution of the board may impose additional requirements on conflict of interest transactions.

History. Acts 1993, No. 1147, § 831.

4-33-832. Loans to or guaranties for directors and officers.

(a) A corporation may not lend money to or guaranty the obligation of a director or officer of the corporation.

(b) The fact that a loan or guaranty is made in violation of this section does not affect the borrower's liability on the loan.

History. Acts 1993, No. 1147, § 832.

4-33-833. Liability for unlawful distributions.

(a) Unless a director complies with the applicable standards of conduct described in § 4-33-830, a director who votes for or assents to a distribution made in violation of this chapter is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating this chapter.

(b) A director held liable for an unlawful distribution under subsection (a) of this section is entitled to contribution:

(1) from every other director who voted for or assented to the distribution without complying with the applicable standards of conduct described in § 4-33-830; and

(2) from each person who received an unlawful distribution for the amount of the distribution whether or not the person receiving the distribution knew it was made in violation of this chapter.

History. Acts 1993, No. 1147, § 833.

4-33-834 — 4-33-839. [Reserved.]

Part D — Officers

4-33-840. Required officers.

(a) Unless otherwise provided in the articles or bylaws, a corporation shall have a president, a secretary, a treasurer and such other officers as are appointed by the board.

(b) The bylaws or the board shall delegate to one (1) of the officers responsibility for preparing minutes of the directors' and members' meetings and for authenticating records of the corporation.

(c) The same individual may simultaneously hold more than one (1) office in a corporation.

History. Acts 1993, No. 1147, § 840.

4-33-841. [Reserved.]

4-33-842. Standards of conduct for officers.

(a) An officer with discretionary authority shall discharge his or her duties under that authority:

(1) in good faith;

(2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(3) in a manner the officer reasonably believes to be in the best interests of the corporation and its members, if any.

(b) In discharging his or her duties an officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(1) one (1) or more officers or employees of the corporation who the officer reasonably believes to be reliable and competent in the matters presented;

(2) legal counsel, public accountants or other persons as to matters the officer reasonably believes are within the person's professional or expert competence; or

(3) in the case of religious corporations, religious authorities and ministers, priests, rabbis or other persons whose position or duties in the religious organization the officer believes justify reliance and confidence and who the officer believes to be reliable and competent in the matters presented.

(c) An officer is not acting in good faith if the officer has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) of this section unwarranted.

(d) An officer is not liable to the corporation, any member, or other person for any action taken or not taken as an officer, if the officer acted in compliance with this section.

History. Acts 1993, No. 1147, § 842.

4-33-843. Resignation and removal of officers.

(a) An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is effective unless the notice specifies a future effective date. If a resignation is made effective at a future date and the corporation accepts the future effective date, its board of directors may fill the pending vacancy before the effective date if the board provides that the successor does not take office until the effective date.

(b) A board may remove any officer at any time with or without cause.

History. Acts 1993, No. 1147, § 843.

4-33-844. Contract rights of officers.

(a) The appointment of an officer does not itself create contract rights.

(b) An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

History. Acts 1993, No. 1147, § 844.

4-33-845. Officers' authority to execute documents.

Any contract or other instrument in writing executed or entered into between a corporation and any other person is not invalidated as to the corporation by any lack of authority of the signing officers in the absence of actual knowledge on the part of the other person that the signing officers had no authority to execute the contract or other instrument if it is signed by any two (2) officers in Category 1 below or by one (1) officer in Category 1 below and one (1) officer in Category 2 below.

Category 1 — The presiding officer of the board and the president.

Category 2 — A vice president, the secretary, treasurer and executive director.

History. Acts 1993, No. 1147, § 845.

4-33-846 — 4-33-849. [Reserved.]

Part E — Indemnification

4-33-850. Part definitions.

In this part:

(1) "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

(2) "Director" means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic business or nonprofit corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. A director is considered to be serving an employee benefit plan at the corporation's request if the director's duties to the corporation also impose duties on, or otherwise involve services by, the director to the plan or to participants in or beneficiaries of the plan. "Director" includes, unless the context requires otherwise, the estate or personal representative of a director.

(3) "Expenses" include counsel fees.

(4) "Liability" means the obligation to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to an employee benefit plan), or reasonable expenses actually incurred with respect to a proceeding.

(5) "Official capacity" means: (i) when used with respect to a director, the office of director in a corporation; and (ii) when used with respect to an individual other than a director, as contemplated in § 4-33-856, the office in a corporation held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the corporation. "Official capacity" does not include service for any other foreign or domestic business or nonprofit corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise.

(6) "Party" includes an individual who was, is or is threatened to be made a named defendant or respondent in a proceeding.

(7) "Proceeding" means any threatened, pending, or completed action, suit or proceeding whether civil, criminal, administrative, or investigative and whether formal or informal.

History. Acts 1993, No. 1147, § 850.

4-33-851. Authority to indemnify.

(a) Except as provided in subsection (d) of this section, a corporation may indemnify an individual made a party to a proceeding because the individual is or was a director against liability incurred in the proceeding if the individual:

(1) conducted himself or herself in good faith; and

(2) reasonably believed:

(i) in the case of conduct in his or her official capacity with the corporation, that his or her conduct was in its best interests; and

(ii) in all other cases, that his or her conduct was at least not opposed to its best interests; and

(3) in the case of any criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful.

(b) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the

participants in and beneficiaries of the plan is conduct that satisfies the requirements of subsection (a)(2)(ii) of this section.

(c) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the standard of conduct described in this section.

(d) A corporation may not indemnify a director under this section:

(1) in connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation; or

(2) in connection with any other proceeding charging improper personal benefit to the director, whether or not involving action in his or her official capacity, in which the director was adjudged liable on the basis that personal benefit was improperly received by the director.

(e) Indemnification permitted under this section in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding.

History. Acts 1993, No. 1147, § 851.

4-33-852. Mandatory indemnification.

Unless limited by its articles of incorporation, a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because he or she is or was a director of the corporation against reasonable expenses actually incurred by the director in connection with the proceeding.

History. Acts 1993, No. 1147, § 852.

4-33-853. Advance for expenses.

(a) A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:

(1) the director furnishes the corporation a written affirmation of his or her good faith belief that he or she has met the standard of conduct described in § 4-33-851;

(2) the director furnishes the corporation a written undertaking, executed personally or on the director's behalf, to repay the advance if it is ultimately determined that the director did not meet the standard of conduct; and

(3) a determination is made that the facts then known to those making the determination would not preclude indemnification under this part.

(b) The undertaking required by subsection (a)(2) of this section must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

(c) Determinations and authorizations of payments under this section shall be made in the manner specified in § 4-33-855.

History. Acts 1993, No. 1147, § 853.

4-33-854. Court-ordered indemnification.

Unless limited by a corporation's articles of incorporation, a director of the corporation who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court after giving any notice the court considers necessary may order indemnification in the amount it considers proper if it determines:

(1) the director is entitled to mandatory indemnification under § 4-33-852, in which case the court shall also order the corporation to pay the director's reasonable expenses incurred to obtain court-ordered indemnification; or

(2) the director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in § 4-33-851(a) or was adjudged liable as described in § 4-33-851(d), but if the director was adjudged so liable indemnification is limited to reasonable expenses incurred.

History. Acts 1993, No. 1147, § 854.

4-33-855. Determination and authorization of indemnification.

(a) A corporation may not indemnify a director under § 4-33-851 unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standards of conduct set forth in § 4-33-851.

(b) The determination shall be made:

(1) by the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding;

(2) if a quorum cannot be obtained under subdivision (b)(1) of this section, by majority vote of a committee duly designated by the board of directors (in which designation directors who are parties may participate), consisting solely of two (2) or more directors not at the time parties to the proceeding;

(3) by special legal counsel:

(i) selected by the board of directors or its committee in the manner prescribed in subdivision (b)(1) or (b)(2) of this section; or

(ii) if a quorum of the board cannot be obtained under subdivision (b)(1) of this section and a committee cannot be designated under subdivision (b)(2) of this section, selected by majority vote of the full board (in which selection directors who are parties may participate);

or

(4) by the members of a mutual benefit corporation, but directors who are at the time parties to the proceeding may not vote on the determination.

(c) Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subsection (b)(3) of this section to select counsel.

(d) A director of a public benefit corporation may not be indemnified until twenty (20) days after the effective date of written notice to the Attorney General of the proposed indemnification.

History. Acts 1993, No. 1147, § 855.

4-33-856. Indemnification of officers, employees and agents.

Unless limited by a corporation's articles of incorporation:

(1) an officer of the corporation who is not a director is entitled to mandatory indemnification under § 4-33-852, and is entitled to apply for court-ordered indemnification under § 4-33-854 in each case, to the same extent as a director;

(2) the corporation may indemnify and advance expenses under this part to an officer, employee, or agent of the corporation who is not a director to the same extent as to a director; and

(3) a corporation may also indemnify and advance expenses to an officer, employee, or agent who is not a director to the extent, consistent with public policy, that may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract.

History. Acts 1993, No. 1147, § 856.

4-33-857. Insurance.

A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation, or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic business or nonprofit corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by him or her in that capacity or arising from his or her status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify the person against the same liability under § 4-33-851 or § 4-33-852.

History. Acts 1993, No. 1147, § 857.

4-33-858. Application of part.

(a) A provision treating a corporation's indemnification of or advance for expenses to directors that is contained in its articles of incorporation, bylaws, a resolution of its members or board of directors, or in a contract or otherwise, is valid only if and to the extent the provision is consistent with this part. If articles of incorporation limit indemnification or advance for expenses, indemnification and advance for expenses are valid only to the extent consistent with the articles.

(b) This part does not limit a corporation's power to pay or reimburse expenses incurred by a director in connection with appearing as a witness in a proceeding at a time when the director has not been made a named defendant or respondent to the proceeding.

History. Acts 1993, No. 1147, § 858.

SUBCHAPTER 9

[Reserved]

SUBCHAPTER 10 — AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS**SECTION.****Part A — Articles of Incorporation**

- 4-33-1001. Authority to amend.
- 4-33-1002. Amendment by directors.
- 4-33-1003. Amendment by directors and members.
- 4-33-1004. Class voting by members on amendments.
- 4-33-1005. Articles of amendment.
- 4-33-1006. Restated articles of incorporation.
- 4-33-1007. Amendment pursuant to judicial reorganization.
- 4-33-1008. Effect of amendment and re-statement.
- 4-33-1009 — 4-33-1019. [Reserved.]

SECTION.**Part B — Bylaws**

- 4-33-1020. Amendment by directors.
- 4-33-1021. Amendment by directors and members.
- 4-33-1022. Class voting by members on amendments.
- 4-33-1023 — 4-33-1029. [Reserved.]

Part C — Articles of Incorporation and Bylaws

- 4-33-1030. Approval by third persons.
- 4-33-1031. Amendment terminating members or redeeming or cancelling memberships.

Part A — Articles of Incorporation**4-33-1001. Authority to amend.**

A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles or to delete a provision not required in the articles. Whether a provision is required or permitted in the articles is determined as of the effective date of the amendment.

History. Acts 1993, No. 1147, § 1001.

4-33-1002. Amendment by directors.

(a) Unless the articles provide otherwise, a corporation's board of directors may adopt one (1) or more amendments to the corporation's articles without member approval:

(1) to extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;

(2) to delete the names and addresses of the initial directors;

(3) to delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the Secretary of State;

(4) to change the corporate name by substituting the word "corporation," "incorporated," "company," "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.," for a similar word or abbreviation in the name, or by adding, deleting or changing a geographical attribution to the name; or

(5) to make any other change expressly permitted by this chapter to be made by director action.

(b) If a corporation has no members, its incorporators, until directors have been chosen, and thereafter its board of directors, may adopt one (1) or more amendments to the corporation's articles subject to any approval required pursuant to § 4-33-1030. The corporation shall provide notice of any meeting at which an amendment is to be voted upon. The notice shall be in accordance with § 4-33-822(c). The notice must also state that the purpose, or one of the purposes, of the meeting is to consider a proposed amendment to the articles and contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment. The amendment must be approved by a majority of the directors in office at the time the amendment is adopted.

History. Acts 1993, No. 1147, § 1002.

4-33-1003. Amendment by directors and members.

(a) Unless this chapter, the articles, bylaws, the members (acting pursuant to subsection (b) of this section), or the board of directors (acting pursuant to subsection (c) of this section) require a greater vote or voting by class, an amendment to a corporation's articles to be adopted must be approved:

(1) by the board if the corporation is a public benefit or religious corporation and the amendment does not relate to the number of directors, the composition of the board, the term of office of directors, or the method or way in which directors are elected or selected;

(2) except as provided in § 4-33-1002(a), by the members by two-thirds ($\frac{2}{3}$) of the votes cast or a majority of the voting power, whichever is less; and

(3) in writing by a person or persons whose approval is required by a provision of the articles authorized by § 4-33-1030.

(b) The members may condition the amendment's adoption on receipt of a higher percentage of affirmative votes or on any other basis.

(c) If the board initiates an amendment to the articles or board approval is required by subsection (a) of this section to adopt an amendment to the articles, the board may condition the amendment's adoption on receipt of a higher percentage of affirmative votes or any other basis.

(d) If the board or the members seek to have the amendment approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in writing in accordance with § 4-33-705. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

(e) If the board or the members seek to have the amendment approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the amendment.

History. Acts 1993, No. 1147, § 1003.

4-33-1004. Class voting by members on amendments.

(a) The members of a class in a public benefit corporation are entitled to vote as a class on a proposed amendment to the articles if the amendment would change the rights of that class as to voting in a manner different than such amendment affects another class or members of another class.

(b) The members of a class in a mutual benefit corporation are entitled to vote as a class on a proposed amendment to the articles if the amendment would:

(1) affect the rights, privileges, preferences, restrictions or conditions of that class as to voting, dissolution, redemption or transfer of memberships in a manner different than such amendment would affect another class;

(2) change the rights, privileges, preferences, restrictions or conditions of that class as to voting, dissolution, redemption or transfer by changing the rights, privileges, preferences, restrictions or conditions of another class.

(3) increase or decrease the number of memberships authorized for that class;

(4) increase the number of memberships authorized for another class;

(5) effect an exchange, reclassification or termination of the memberships of that class; or

(6) authorize a new class of memberships.

(c) The members of a class of a religious corporation are entitled to vote as a class on a proposed amendment to the articles only if a class vote is provided for in the articles or bylaws.

(d) If a class is to be divided into two (2) or more classes as a result of an amendment to the articles of a public benefit or mutual benefit corporation, the amendment must be approved by the members of each class that would be created by the amendment.

(e) Except as provided in the articles or bylaws of a religious corporation, if a class vote is required to approve an amendment to the articles of a corporation, the amendment must be approved by the members of the class by two-thirds ($\frac{2}{3}$) of the votes cast by the class or a majority of the voting power of the class, whichever is less.

(f) A class of members of a public benefit or mutual benefit corporation is entitled to the voting rights granted by this section although the articles and bylaws provide that the class may not vote on the proposed amendment.

History. Acts 1993, No. 1147, § 1004.

4-33-1005. Articles of amendment.

A corporation amending its articles shall deliver to the Secretary of State articles of amendment setting forth:

- (1) the name of the corporation;
- (2) the text of each amendment adopted;
- (3) the date of each amendment's adoption;
- (4) if approval of members was not required, a statement to that effect and a statement that the amendment was approved by a sufficient vote of the board of directors or incorporators;
- (5) if approval by members was required:
 - (i) the designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the amendment, and number of votes of each class indisputably voting on the amendment; and
 - (ii) either the total number of votes cast for and against the amendment by each class entitled to vote separately on the amendment or the total number of undisputed votes cast for the amendment by each class and a statement that the number cast for the amendment by each class was sufficient for approval by that class.
- (6) if approval of the amendment by some person or persons other than the members, the board or the incorporators is required pursuant to § 4-33-1030, a statement that the approval was obtained.

History. Acts 1993, No. 1147, § 1005.

4-33-1006. Restated articles of incorporation.

(a) A corporation's board of directors may restate its articles of incorporation at any time with or without approval by members or any other person.

(b) The restatement may include one (1) or more amendments to the articles. If the restatement includes an amendment requiring approval

by the members or any other person, it must be adopted as provided in § 4-33-1003.

(c) If the restatement includes an amendment requiring approval by members, the board must submit the restatement to the members for their approval.

(d) If the board seeks to have the restatement approved by the members at a membership meeting, the corporation shall notify each of its members of the proposed membership meeting in writing in accordance with § 4-33-705. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed restatement and contain or be accompanied by a copy or summary of the restatement that identifies any amendments or other change it would make in the articles.

(e) If the board seeks to have the restatement approved by the members by written ballot or written consent, the material soliciting the approval shall contain or be accompanied by a copy or summary of the restatement that identifies any amendments or other change it would make in the articles.

(f) A restatement requiring approval by the members must be approved by the same vote as an amendment to articles under § 4-33-1003.

(g) If the restatement includes an amendment requiring approval pursuant to § 4-33-1030, the board must submit the restatement for such approval.

(h) A corporation restating its articles shall deliver to the Secretary of State articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate setting forth:

(1) whether the restatement contains an amendment to the articles requiring approval by the members or any other person other than the board of directors and, if it does not, that the board of directors adopted the restatement; or

(2) if the restatement contains an amendment to the articles requiring approval by the members, the information required in § 4-33-1005; and

(3) if the restatement contains an amendment to the articles requiring approval by a person whose approval is required pursuant to § 4-33-1030, a statement that such approval was obtained.

(i) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

(j) The Secretary of State may certify restated articles of incorporation, as the articles of incorporation currently in effect, without including the certificate information required by subsection (h) of this section.

History. Acts 1993, No. 1147, § 1006.

4-33-1007. Amendment pursuant to judicial reorganization.

(a) A corporation's articles may be amended without board approval or approval by the members or approval required pursuant to § 4-33-1030 to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute if the articles after amendment contain only provisions required or permitted by § 4-33-202.

(b) The individual or individuals designated by the court shall deliver to the Secretary of State articles of amendment setting forth:

- (1) the name of the corporation;
- (2) the text of each amendment approved by the court;
- (3) the date of the court's order or decree approving the articles of amendment;
- (4) the title of the reorganization proceeding in which the order or decree was entered; and

(5) a statement that the court had jurisdiction of the proceeding under federal statute.

(c) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

History. Acts 1993, No. 1147, § 1007.

4-33-1008. Effect of amendment and restatement.

An amendment to articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, any requirement or limitation imposed upon the corporation or any property held by it by virtue of any trust upon which such property is held by the corporation or the existing rights of persons other than members of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

History. Acts 1993, No. 1147, § 1008.

4-33-1009 — 4-33-1019. [Reserved.]**Part B — Bylaws****4-33-1020. Amendment by directors.**

If a corporation has no members, its incorporators, until directors have been chosen, and thereafter its board of directors, may adopt one (1) or more amendments to the corporation's bylaws subject to any approval required pursuant to § 4-33-1030. The corporation shall provide notice of any meeting of directors at which an amendment is to be approved. The notice shall be in accordance with § 4-33-822(c). The

notice must also state that the purpose, or one of the purposes, of the meeting is to consider a proposed amendment of the bylaws and contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment. The amendment must be approved by a majority of the directors in office at the time the amendment is adopted.

History. Acts 1993, No. 1147, § 1020.

4-33-1021. Amendment by directors and members.

(a) Unless this chapter, the articles, bylaws, the members (acting pursuant to subsection (b) of this section), or the board of directors (acting pursuant to subsection (c) of this section) require a greater vote or voting by class, an amendment to a corporation's bylaws to be adopted must be approved:

(1) by the board if the corporation is a public benefit or religious corporation and the amendment does not relate to the number of directors, the composition of the board, the term of office of directors, or the method or way in which directors are elected or selected;

(2) by the members by two-thirds ($\frac{2}{3}$) of the votes cast or a majority of the voting power, whichever is less; and

(3) in writing by any person or persons whose approval is required by a provision of the articles authorized by § 4-33-1030.

(b) The members may condition the amendment's adoption on its receipt of a higher percentage of affirmative votes or on any other basis.

(c) If the board initiates an amendment to the bylaws or board approval is required by subsection (a) of this section to adopt an amendment to the bylaws, the board may condition the amendment's adoption on receipt of a higher percentage of affirmative votes or on any other basis.

(d) If the board or the members seek to have the amendment approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in writing in accordance with § 4-33-705. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

(e) If the board or the members seek to have the amendment approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the amendment.

History. Acts 1993, No. 1147, § 1021.

4-33-1022. Class voting by members on amendments.

(a) The members of a class in a public benefit corporation are entitled to vote as a class on a proposed amendment to the bylaws if the amendment would change the rights of that class as to voting in a

manner different than such amendment affects another class or members of another class.

(b) The members of a class in a mutual benefit corporation are entitled to vote as a class on a proposed amendment to the bylaws if the amendment would:

(1) affect the rights, privileges, preferences, restrictions or conditions of that class as to voting, dissolution, redemption or transfer of memberships in a manner different than such amendment would affect another class;

(2) change the rights, privileges, preferences, restrictions or conditions of that class as to voting, dissolution, redemption or transfer by changing the rights, privileges, preferences, restrictions or conditions of another class;

(3) increase or decrease the number of memberships authorized for that class;

(4) increase the number of memberships authorized for another class;

(5) effect an exchange, reclassification or termination of all or part of the memberships of that class; or

(6) authorize a new class of memberships.

(c) The members of a class of a religious corporation are entitled to vote as a class on a proposed amendment to the bylaws only if a class vote is provided for in the articles or bylaws.

(d) If a class is to be divided into two (2) or more classes as a result of an amendment to the bylaws, the amendment must be approved by the members of each class that would be created by the amendment; and

(e) If a class vote is required to approve an amendment to the bylaws, the amendment must be approved by the members of the class by two-thirds (2⁄3) of the votes cast by the class or a majority of the voting power of the class, whichever is less.

(f) A class of members is entitled to the voting rights granted by this section although the articles and bylaws provide that the class may not vote on the proposed amendment.

History. Acts 1993, No. 1147, § 1022.

4-33-1023 — 4-33-1029. [Reserved.]

Part C — Articles of Incorporation and Bylaws

4-33-1030. Approval by third persons.

The articles may require an amendment to the articles or bylaws to be approved in writing by a specified person or persons other than the board. Such an article provision may only be amended with the approval in writing of such person or persons.

History. Acts 1993, No. 1147, § 1030.

4-33-1031. Amendment terminating members or redeeming or cancelling memberships.

(a) Any amendment to the articles or bylaws of a public benefit or mutual benefit corporation that would terminate all members or any class of members or redeem or cancel all memberships or any class of memberships must meet the requirements of this chapter and this section, unless otherwise provided in the articles or bylaws.

(b) Before adopting a resolution proposing such an amendment, the board of a mutual benefit corporation shall give notice of the general nature of the amendment to the members.

(c) After adopting a resolution proposing such an amendment, the notice to members proposing such amendment shall include one (1) statement of up to five hundred (500) words opposing the proposed amendment if such statement is submitted by any five (5) members or members having three percent (3%) or more of the voting power, whichever is less, not later than twenty (20) days after the board has voted to submit such amendment to the members for their approval. In public benefit corporations the production and mailing costs shall be paid by the requesting members. In mutual benefit corporations the production and mailing costs shall be paid by the corporation.

(d) Any such amendment shall be approved by the members by two-thirds ($\frac{2}{3}$) of the votes cast by each class.

(e) The provisions of § 4-33-621 shall not apply to any amendment meeting the requirements of this chapter and this section.

History. Acts 1993, No. 1147, § 1031.

SUBCHAPTER 11 — MERGER**SECTION.**

- 4-33-1101. Approval of plan of merger.
- 4-33-1102. Limitations on mergers by public benefit or religious corporations.
- 4-33-1103. Action on plan by board, members and third persons.
- 4-33-1104. Articles of merger.

SECTION.

- 4-33-1105. Effect of merger.
- 4-33-1106. Merger with foreign corporation.
- 4-33-1107. Bequests, devises and gifts.
- 4-33-1108. Continuation of prior corporate existence for limited purpose.

RESEARCH REFERENCES

Am. Jur. 19 Am. Jur. 2d, Corp., § 2705.

4-33-1101. Approval of plan of merger.

(a) Subject to the limitations set forth in § 4-33-1102, two (2) or more nonprofit corporations may merge, if the plan of merger is approved or provided in § 4-33-1103.

(b) The plan of merger must set forth:

- (1) the name of each corporation planning to merge and the name of the surviving corporation into which each plans to merge;
 - (2) the terms and conditions of the planned merger;
 - (3) the manner and basis, if any, of converting the memberships of each public benefit or religious corporation into memberships of the surviving corporation; and
 - (4) if the merger involves a mutual benefit corporation, the manner and basis, if any, of converting memberships of each merging corporation into memberships, obligations or securities of the surviving or any other corporation or into cash or other property in whole or in part.
- (c) The plan of merger may set forth:
- (1) any amendments to the articles of incorporation or bylaws of the surviving corporation to be effected by the planned merger; and
 - (2) other provisions relating to the planned merger.

History. Acts 1993, No. 1147, § 1101.

4-33-1102. Limitations on mergers by public benefit or religious corporations.

(a) Without the prior approval of the circuit court of the county in which the corporation's principal office (or, if none in this state, its registered office) is located, a public benefit or religious corporation may merge only with:

- (1) a public benefit or religious corporation;
- (2) a foreign corporation that would qualify under this chapter as a public benefit or religious corporation; or
- (3) a mutual benefit corporation, provided the public benefit or religious corporation is the surviving corporation and continues to be a public benefit corporation or religious corporation after the merger.

(b) Without an order of the circuit court of the county in which the corporation's principal office (or, if none in this state, its registered office) is located, no member of a public benefit or religious corporation may receive or keep anything as a result of a merger other than a membership or membership in the surviving public benefit or religious corporation. The court shall approve the transaction if it is in the public interest.

History. Acts 1993, No. 1147, § 1102. cuit courts, Ark. Const. Amend. 80, §§ 6, 19.
Cross References. Jurisdiction of cir-

4-33-1103. Action on plan by board, members and third persons.

(a) Unless this chapter, the articles, bylaws or the board of directors or members (acting pursuant to subsection (c) of this section) require a greater vote or voting by class, a plan of merger to be adopted must be approved:

- (1) by the board;
- (2) by the members, if any, by two-thirds ($\frac{2}{3}$) of the votes cast or a majority of the voting power, whichever is less; and

(3) in writing by any person or persons whose approval is required by a provision of the articles authorized by § 4-33-1030 for an amendment to the articles or bylaws.

(b) If the corporation does not have members, the merger must be approved by a majority of the directors in office at the time the merger is approved. In addition the corporation shall provide notice of any directors' meeting at which such approval is to be obtained in accordance with § 4-33-822(c). The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed merger.

(c) The board may condition its submission of the proposed merger, and the members may condition their approval of the merger, on receipt of a higher percentage of affirmative votes or on any other basis.

(d) If the board seeks to have the plan approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with § 4-33-705. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger and contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation shall include any provision that, if contained in a proposed amendment of the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of the disappearing corporation shall include a copy or summary of the articles and bylaws that will be in effect immediately after the merger takes effect.

(e) If the board seeks to have the plan approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation shall include any provision that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of the disappearing corporation shall include a copy or summary of the articles and bylaws that will be in effect immediately after the merger takes effect.

(f) Voting by a class of members is required on a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation or bylaws, would entitle the class of members to vote as a class on the proposed amendment under §§ 4-33-1004 or 4-33-1022. The plan is approved by a class of members by two-thirds ($\frac{2}{3}$) of the votes cast by the class or a majority of the voting power of the class, whichever is less.

(g) After a merger is adopted, and at any time before articles of merger are filed, the planned merger may be abandoned (subject to any contractual rights) without further action by members or other persons who approved the plan in accordance with the procedure set forth in the plan of merger or, if none is set forth, in the manner determined by the board of directors.

History. Acts 1993, No. 1147, § 1103.

4-33-1104. Articles of merger.

After a plan of merger is approved by the board of directors, and if required by § 4-33-1103, by the members and any other persons, the surviving or acquiring corporation shall deliver to the Secretary of State articles of merger setting forth:

- (1) the plan of merger;
- (2) if approval of members was not required, a statement to that effect and a statement that the plan was approved by a sufficient vote of the board of directors;
- (3) if approval by members was required:
 - (i) the designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the plan, and number of votes of each class indisputably voting on the plan; and
 - (ii) either the total number of votes cast for and against the plan by each class entitled to vote separately on the plan or the total number of undisputed votes cast for the plan by each class and a statement that the number cast for the plan by each class was sufficient for approval by that class;
- (4) if approval of the plan by some person or persons other than the members or the board is required pursuant to § 4-33-1103(a)(3), a statement that the approval was obtained.

History. Acts 1993, No. 1147, § 1104.

4-33-1105. Effect of merger.

When a merger takes effect:

- (1) every other corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases;
- (2) the title to all real estate and other property owned by each corporation party to the merger is vested in the surviving corporation without reversion or impairment subject to any and all conditions to which the property was subject prior to the merger;
- (3) the surviving corporation has all liabilities and obligations of each corporation party to the merger;
- (4) a proceeding pending against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased; and
- (5) the articles of incorporation and bylaws of the surviving corporation are amended to the extent provided in the plan of merger.

History. Acts 1993, No. 1147, § 1105.

4-33-1106. Merger with foreign corporation.

(a) Except as provided in § 4-33-1102, one (1) or more foreign nonprofit corporations may merge with one (1) or more domestic nonprofit corporations if:

(1) the merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger;

(2) the foreign corporation complies with § 4-33-1104 if it is the surviving corporation of the merger; and

(3) each domestic nonprofit corporation complies with the applicable provisions of §§ 4-33-1101 — 4-33-1103 and, if it is the surviving corporation of the merger, with § 4-33-1104.

(b) Upon the merger taking effect, the surviving foreign business or nonprofit corporation is deemed to have irrevocably appointed the Secretary of State as its agent for service of process in any proceeding brought against it.

History. Acts 1993, No. 1147, § 1106.

4-33-1107. Bequests, devises and gifts.

Any bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance, that is made to a constituent corporation and that takes effect or remains payable after the merger, inures to the surviving corporation unless the will or other instrument otherwise specifically provides.

History. Acts 1993, No. 1147, § 1107.

4-33-1108. Continuation of prior corporate existence for limited purpose.

(a) The corporate existence of each constituent corporation which has been dissolved through merger or consolidation shall be continued indefinitely for the limited purpose of enabling the constituent corporation to execute through its own officers formal deeds, conveyances, assignments, and other instruments evidencing the transfer from the constituent to the surviving corporation, or new corporation created by consolidation, of any or all real and personal properties which have passed from the constituent to the surviving or consolidated corporation by operation of law.

(b) The execution of the instruments shall not be essential to effect the transfer of title from the constituent to the surviving or consolidated corporation, inasmuch as the transfer will take effect through operation of law; but the power to execute such instruments is given to the end that it may be exercised:

(1) In respect to properties located in foreign jurisdictions which may not recognize a transmittal of title by operation of law under the merger and consolidation statutes of this state; and

(2) In any other situation where the directors of the surviving or consolidated corporation consider the execution of the instruments desirable.

History. Acts 1993, No. 1147, § 1108.

SUBCHAPTER 12 — SALE OF ASSETS

SECTION.

4-33-1201. Sale of assets in regular course of activities and mortgage of assets.

SECTION.

4-33-1202. Sale of assets other than in regular course of activities.

4-33-1201. Sale of assets in regular course of activities and mortgage of assets.

(a) A corporation may on the terms and conditions and for the consideration determined by the board of directors:

(1) sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property in the usual and regular course of its activities; or

(2) mortgage, pledge, dedicate to the repayment of indebtedness (whether with or without recourse), or otherwise encumber any or all of its property whether or not in the usual and regular course of its activities.

(b) Unless the articles require it, approval of the members or any other person of a transaction described in subsection (a) of this section is not required.

History. Acts 1993, No. 1147, § 1201.

4-33-1202. Sale of assets other than in regular course of activities.

(a) A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property (with or without the goodwill) other than in the usual and regular course of its activities on the terms and conditions and for the consideration determined by the corporation's board if the proposed transaction is authorized by subsection (b) of this section.

(b) Unless this chapter, the articles, bylaws, or the board of directors or members (acting pursuant to subsection (d) of this section) require a greater vote or voting by class, the proposed transaction to be authorized must be approved:

(1) by the board;

(2) by the members by two-thirds ($\frac{2}{3}$) of the votes cast or a majority of the voting power, whichever is less; and

(3) in writing by any person or persons whose approval is required by a provision of the articles authorized by § 4-33-1030 for an amendment to the articles or bylaws.

(c) If the corporation does not have members the transaction must be approved by a vote of a majority of the directors in office at the time the

transaction is approved. In addition the corporation shall provide notice of any directors' meeting at which such approval is to be obtained in accordance with § 4-33-822(c) of this section. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, of the property or assets of the corporation and contain or be accompanied by a copy or summary of a description of the transaction.

(d) The board may condition its submission of the proposed transaction, and the members may condition their approval of the transaction, on receipt of a higher percentage of affirmative votes or on any other basis.

(e) If the corporation seeks to have the transaction approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with § 4-33-705. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, of the property or assets of the corporation and contain or be accompanied by a copy or summary of a description of the transaction.

(f) If the board needs to have the transaction approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of a description of the transaction.

(g) After a sale, lease, exchange, or other disposition of property is authorized, the transaction may be abandoned (subject to any contractual rights), without further action by the members or any other person who approved the transaction in accordance with the procedure set forth in the resolution proposing the transaction or, if none is set forth, in the manner determined by the board of directors.

History. Acts 1993, No. 1147, § 1202.

SUBCHAPTER 13 — DISTRIBUTIONS

SECTION.

4-33-1301. Prohibited distributions.

4-33-1302. Authorized distributions.

4-33-1301. Prohibited distributions.

Except as authorized by § 4-33-1302, a corporation shall not make any distributions.

History. Acts 1993, No. 1147, § 1301.

4-33-1302. Authorized distributions.

(a) A mutual benefit corporation may purchase its memberships if after the purchase is completed:

(1) the corporation would be able to pay its debts as they become due in the usual course of its activities; and

(2) the corporation’s total assets would at least equal the sum of its total liabilities.

(b) Corporations may make distributions upon dissolution in conformity with §§ 4-33-1401 et seq.

(c) Corporations that are organized and operated as cooperative within the meaning of Subchapter T of the Internal Revenue Code of 1986, as amended, Internal Revenue Code §§ 1381 — 1388, may make distributions to their members in accordance with Subchapter T.

History. Acts 1993, No. 1147, § 1302; 1999, No. 980, § 1.

Amendments. The 1999 amendment added (c).

U.S. Code. Sections 1381 through 1388 of Subchapter T of the Internal Revenue Code of 1986 are codified as 26 U.S.C. §§ 1381 through 1388.

SUBCHAPTER 14 — DISSOLUTION

SECTION.	SECTION.
Part A — Voluntary Dissolution	4-33-1421. Procedure for and effect of administrative dissolution.
4-33-1401. Dissolution by incorporators or directors and third persons.	4-33-1422. Reinstatement following administrative dissolution.
4-33-1402. Dissolution by directors, members and third persons.	4-33-1423. Appeal from denial of reinstatement.
4-33-1403. [Reserved.]	4-33-1424 — 4-33-1429. [Reserved.]
4-33-1404. Articles of dissolution.	Part C — Judicial Dissolution
4-33-1405. [Reserved.]	4-33-1430. Grounds for judicial dissolution.
4-33-1406. Effect of dissolution.	4-33-1431. Procedure for judicial dissolution.
4-33-1407. Known claims against dissolved corporation.	4-33-1432. Receivership or custodianship.
4-33-1408. Unknown claims against dissolved corporation.	4-33-1433. Decree of dissolution.
4-33-1409 — 4-33-1419. [Reserved.]	4-33-1434 — 4-33-1439. [Reserved.]
Part B — Administrative Dissolution	Part D — Miscellaneous
4-33-1420. Grounds for administrative dissolution.	4-33-1440. Deposit with Treasurer of State.

RESEARCH REFERENCES

Am. Jur. 18A Am. Jur. 2d, Corp., §§ 201, 933.

19 Am. Jur. 2d, Corp., §§ 2738, 2740, 2895.

Part A — Voluntary Dissolution

4-33-1401. Dissolution by incorporators or directors and third persons.

(a) A majority of the incorporators or directors of a corporation that has no members may, subject to any approval required by the articles or

bylaws, dissolve the corporation by delivering to the Secretary of State articles of dissolution.

(b) The corporation shall give notice of any meeting at which dissolution will be approved. The notice shall be in accordance with § 4-33-822(c). The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolution of the corporation.

(c) The incorporators or directors in approving dissolution shall adopt a plan of dissolution indicating to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

History. Acts 1993, No. 1147, § 1401.

4-33-1402. Dissolution by directors, members and third persons.

(a) Unless this chapter, the articles, bylaws or the board of directors or members (acting pursuant to subsection (c) of this section) require a greater vote or voting by class, dissolution is authorized if it is approved:

(1) by the board;

(2) by the members, if any, by two-thirds ($\frac{2}{3}$) of the votes cast or a majority of the voting power, whichever is less; and

(3) in writing by any person or persons whose approval is required by a provision of the articles authorized by § 4-33-1030 for an amendment to the articles or bylaws.

(b) If the corporation does not have members, dissolution must be approved by a vote of a majority of the directors in office at the time the transaction is approved. In addition, the corporation shall provide notice of any directors' meeting at which such approval is to be obtained in accordance with § 4-33-822(c). The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolution of the corporation and contain or be accompanied by a copy or summary of the plan of dissolution.

(c) The board may condition its submission of the proposed dissolution, and the members may condition their approval of the dissolution on receipt of a higher percentage of affirmative votes or on any other basis.

(d) If the board seeks to have dissolution approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with § 4-33-705. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation and contain or be accompanied by a copy or summary of the plan of dissolution.

(e) If the board seeks to have dissolution approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the plan of dissolution.

(f) The plan of dissolution shall indicate to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

History. Acts 1993, No. 1147, § 1402.

4-33-1403. [Reserved.]

4-33-1404. Articles of dissolution.

(a) At any time after dissolution is authorized, the corporation may dissolve by delivering to the Secretary of State articles of dissolution setting forth:

- (1) the name of the corporation;
- (2) the date dissolution was authorized;
- (3) a statement that dissolution was approved by a sufficient vote of the board;

(4) if approval of members was not required, a statement to that effect and a statement that dissolution was approved by a sufficient vote of the board of directors or incorporators;

(5) if approval by members was required:

(i) the designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on dissolution, and number of votes of each class indisputably voting on dissolution; and

(ii) either the total number of votes cast for and against dissolution by each class entitled to vote separately on dissolution or the total number of undisputed votes cast for dissolution by each class and a statement that the number cast for dissolution by each class was sufficient for approval by that class.

(6) if approval of dissolution by some person or persons other than the members, the board or the incorporators is required pursuant to § 4-33-1402(a)(3), a statement that the approval was obtained.

(b) A corporation is dissolved upon the effective date of its articles of dissolution.

History. Acts 1993, No. 1147, § 1403.

4-33-1405. [Reserved.]

4-33-1406. Effect of dissolution.

(a) A dissolved corporation continues its corporate existence but may not carry on any activities except those appropriate to wind up and liquidate its affairs, including:

- (1) preserving and protecting its assets and minimizing its liabilities;
- (2) discharging or making provision for discharging its liabilities and obligations;

(3) disposing of its properties that will not be distributed in kind;

(4) returning, transferring or conveying assets held by the corporation upon a condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, in accordance with such condition;

(5) transferring, subject to any contractual or legal requirements, its assets as provided in or authorized by its articles of incorporation or bylaws;

(6) if the corporation is a public benefit or religious corporation, and no provision has been made in its articles or bylaws for distribution of assets on dissolution, transferring, subject to any contractual or legal requirement, its assets: (i) to one (1) or more persons described in section 501(c)(3) of the Internal Revenue Code, or (ii) if the dissolved corporation is not described in section 501(c)(3) of the Internal Revenue Code, to one (1) or more public benefit or religious corporations;

(7) if the corporation is a mutual benefit corporation and no provision has been made in its articles or bylaws for distribution of assets on dissolution, transferring its assets to its members or, if it has no members, to those persons whom the corporation holds itself out as benefitting or serving; and

(8) doing every other act necessary to wind up and liquidate its assets and affairs.

(b) Dissolution of a corporation does not:

(1) transfer title to the corporation's property;

(2) subject its directors or officers to standards of conduct different from those prescribed in §§ 4-33-801 et seq.;

(3) change quorum or voting requirements for its board or members; change provision for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws;

(4) prevent commencement of a proceeding by or against the corporation in its corporate name;

(5) abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or

(6) terminate the authority of the registered agent.

History. Acts 1993, No. 1147, § 1404. section, is codified as 26 U.S.C.

U.S. Code. Section 501(c)(3) of the Internal Revenue Code, referred to in this § 501(c)(3).

4-33-1407. Known claims against dissolved corporation.

(a) A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

(b) The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice must:

(1) describe information that must be included in a claim;

(2) provide a mailing address where a claim may be sent;

(3) state the deadline, which may not be fewer than one hundred twenty (120) days from the effective date of the written notice, by which the dissolved corporation must receive the claim; and

(4) state that the claim will be barred if not received by the deadline.

(c) A claim against the dissolved corporation is barred:

(1) if a claimant who was given written notice under subsection (b) of this section does not deliver the claim to the dissolved corporation by the deadline;

(2) if a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within ninety (90) days from the effective date of the rejection notice.

(d) For purposes of this section “claim” does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

History. Acts 1993, No. 1147, § 1405.

4-33-1408. Unknown claims against dissolved corporation.

(a) At any time after dissolution is authorized, a corporation may also publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.

(b) The notice must:

(1) be published one (1) time in a newspaper of general circulation in the county where the corporation’s principal office (or, if none in this state, its registered office) is or was last located;

(2) describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(3) state that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within one (1) year after publication of the notice.

(c) If the corporation publishes a newspaper notice in accordance with subsection (b) of this section, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the corporation within one (1) year after the publication date of the newspaper notice:

(1) a claimant who did not receive written notice under § 4-33-1407;

(2) a claimant whose claim was timely sent to the corporation but not acted on; and

(3) a claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(d) A claim may be enforced under this section:

(1) against the corporation, to the extent of its undistributed assets;
or

(2) if the assets have been distributed in liquidation, against any person, other than a creditor of the corporation, to whom the corporation distributed its property to the extent of the distributee’s pro rata share of the claim or the corporate assets distributed to such person in liquidation, whichever is less, but the distributee’s total liability for all claims under this section may not exceed the total amount of assets distributed to the distributee.

History. Acts 1993, No. 1147, § 1406.

4-33-1409 — 4-33-1419. [Reserved.]**Part B — Administrative Dissolution****4-33-1420. Grounds for administrative dissolution.**

The Secretary of State may commence a proceeding under § 4-33-1421 to administratively dissolve a corporation if:

(1) the corporation does not pay within sixty (60) days after they are due any taxes or penalties imposed by this chapter;

(2) the corporation is without a registered agent or registered office in this state for one hundred twenty (120) days or more;

(3) the corporation does not notify the Secretary of State within one hundred twenty (120) days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued; or

(4) the corporation's period of duration, if any, stated in its articles of incorporation expires.

History. Acts 1993, No. 1147, § 1420.

4-33-1421. Procedure for and effect of administrative dissolution.

(a) Upon determining that one (1) or more grounds exist under § 4-33-1420 for dissolving a corporation, the Secretary of State shall serve the corporation with written notice of that determination under § 4-33-504.

(b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within at least sixty (60) days after service of the notice is perfected under § 4-33-504, the Secretary of State may administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the corporation under § 4-33-504.

(c) A corporation administratively dissolved continues its corporate existence but may not carry on any activities except those necessary to wind up and liquidate its affairs under § 4-33-1406 and notify its claimants under §§ 4-33-1407 and 4-33-1408.

(d) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

History. Acts 1993, No. 1147, § 1421.

4-33-1422. Reinstatement following administrative dissolution.

(a) A corporation administratively dissolved under § 4-33-1421 may apply to the Secretary of State for reinstatement within two (2) years after the effective date of dissolution. The application must:

(1) recite the name of the corporation and the effective date of its administrative dissolution;

(2) state that the ground or grounds for dissolution either did not exist or have been eliminated;

(3) state that the corporation's name satisfies the requirements of § 4-33-401; and

(4) contain an affidavit or a certificate from the Department of Finance and Administration reciting that all state taxes owed by the corporation have been paid.

(b) If the Secretary of State determines that the application contains the information required by subsection (a) of this section and that the information is correct, the Secretary of State shall cancel the certificate of dissolution and prepare a certificate of reinstatement reciting that determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under § 4-33-504.

(c) When reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation shall resume carrying on its activities as if the administrative dissolution had never occurred.

History. Acts 1993, No. 1147, § 1422.

4-33-1423. Appeal from denial of reinstatement.

(a) The Secretary of State, upon denying a corporation's application for reinstatement following administrative dissolution, shall serve the corporation under § 4-33-504 with a written notice that explains the reasons for denial.

(b) The corporation may appeal the denial of reinstatement to the Circuit Court of Pulaski County within ninety (90) days after service of the notice of denial is perfected. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the Secretary of State's certificate of dissolution, the corporation's application for reinstatement, and the Secretary of State's notice of denial.

(c) The court may summarily order the Secretary of State to reinstate the dissolved corporation or may take other action the court considers appropriate.

(d) The court's final decision may be appealed as in other civil proceedings.

History. Acts 1993, No. 1147, § 1423.

Cross References. Jurisdiction of cir-

cuit courts, Ark. Const. Amend. 80, §§ 6, 19.

4-33-1424 — 4-33-1429. [Reserved.]**Part C — Judicial Dissolution****4-33-1430. Grounds for judicial dissolution.**

(a) The circuit court may dissolve a corporation:

(1) in a proceeding by the attorney general if it is established that:

(i) the corporation obtained its articles of incorporation through fraud;

(ii) the corporation has continued to exceed or abuse the authority conferred upon it by law; or

(iii) the corporation is a public benefit corporation and the corporate assets are being fraudulently misapplied or wasted.

(2) except as provided in the articles or bylaws of a religious corporation, in a proceeding by fifty (50) members or members holding five percent (5%) of the voting power, whichever is less, or by a director or any person specified in the articles, if it is established that:

(i) the directors are deadlocked in the management of the corporate affairs, and the members, if any, are unable to breach the deadlock;

(ii) the directors or those in control of the corporation have acted, are acting or will act in a manner that is illegal or fraudulent;

(iii) the members are deadlocked in voting power and have failed, for a period that includes at least two (2) consecutive annual meeting dates, to elect successors to directors whose terms have, or would otherwise have, expired; or

(iv) the corporate assets are being fraudulently misapplied or wasted.

(3) in a proceeding by a creditor if it is established that:

(i) the creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied and the corporation is insolvent; or

(ii) the corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent.

(4) in a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

(b) Prior to dissolving a corporation, the court shall consider whether:

(1) there are reasonable alternatives to dissolution;

(2) dissolution is in the public interest, if the corporation is a public benefit corporation; and

(3) dissolution is the best way of protecting the interests of members, if the corporation is a mutual benefit corporation.

History. Acts 1993, No. 1147, § 1430.

Cross References. Jurisdiction of cir-

cuit courts, Ark. Const. Amend. 80, §§ 6, 19.

4-33-1431. Procedure for judicial dissolution.

(a) Venue for a proceeding by the Attorney General to dissolve a corporation lies in the Circuit Court of Pulaski County. Venue for a proceeding brought by any other party named in § 4-33-1430 lies in the circuit court of the county where a corporation's principal office (or, if none in this state, its registered office) is or was last located.

(b) It is not necessary to make directors or members parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(c) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the activities of the corporation until a full hearing can be held.

History. Acts 1993, No. 1147, § 1431. cuit courts, Ark. Const. Amend. 80, §§ 6,
Cross References. Jurisdiction of cir- 19.

4-33-1432. Receivership or custodianship.

(a) A court in a judicial proceeding brought to dissolve a public benefit or mutual benefit corporation may appoint one (1) or more receivers to wind up and liquidate, or one (1) or more custodians to manage, the affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of its property wherever located.

(b) The court may appoint an individual, or a domestic or foreign business or nonprofit corporation (authorized to transact business in this state) as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(c) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(1) the receiver (i) may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court; provided, however, that the receiver's power to dispose of the assets of the corporation is subject to any trust and other restrictions that would be applicable to the corporation; and (ii) may sue and defend in the receiver's or custodian's name as receiver or custodian of the corporation in all courts of this state;

(2) the custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its members and creditors.

(d) The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a

receiver, if doing so is in the best interests of the corporation, its members, and creditors.

(e) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and the receiver or custodian's counsel from the assets of the corporation or proceeds from the sale of the assets.

History. Acts 1993, No. 1147, § 1432.

4-33-1433. Decree of dissolution.

(a) If after a hearing the court determines that one (1) or more grounds for judicial dissolution described in § 4-33-1430 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the Secretary of State, who shall file it.

(b) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's affairs in accordance with § 4-33-1406 and the notification of its claimants in accordance with §§ 4-33-1407 and 4-33-1408.

History. Acts 1993, No. 1147, § 1433.

4-33-1434 — 4-33-1439. [Reserved.]

Part D — Miscellaneous

4-33-1440. Deposit with Treasurer of State.

Assets of a dissolved corporation that should be transferred to a creditor, claimant, or member of the corporation who cannot be found or who is not competent to receive them, shall be reduced to cash subject to known trust restrictions and deposited with the Treasurer of State for safekeeping; provided, however, that in the Treasurer of State's discretion property may be received and held in kind. When the creditor, claimant, or member furnishes satisfactory proof of entitlement to the amount deposited or property held in kind, the Treasurer of State shall deliver to the creditor, member or other person or his or her representative that amount or property.

History. Acts 1993, No. 1147, § 1440.

SUBCHAPTER 15 — FOREIGN CORPORATIONS

SECTION.

Part A — Certificate of Authority

4-33-1501. Authority to transact business required.

SECTION.

4-33-1502. Consequences of transacting business without authority.

SECTION.
4-33-1503. Application for certificate of authority.
4-33-1504. Amended certificate of authority.
4-33-1505. Effect of certificate of authority.
4-33-1506. Corporate name of foreign corporation.
4-33-1507. Registered office and registered agent of foreign corporation.
4-33-1508. Change of registered office or registered agent of foreign corporation.
4-33-1509. Resignation of registered agent of foreign corporation.

SECTION.
4-33-1510. Service on foreign corporation.
4-33-1511 — 4-33-1519. [Reserved.]

Part B — Withdrawal
4-33-1520. Withdrawal of foreign corporation.
4-33-1521 — 4-33-1529. [Reserved.]

Part C — Revocation of Certificate of Authority
4-33-1530. Grounds for revocation.
4-33-1531. Procedure and effect of revocation.
4-33-1532. Appeal from revocation.

RESEARCH REFERENCES

Am. Jur. 18 Am. Jur. 2d, Corp., § 2.
18B Am. Jur. 2d, Corp., §§ 194, 271, 321.
C.J.S. 19 C.J.S., Corp., § 883 et seq.

Part A — Certificate of Authority

4-33-1501. Authority to transact business required.

- (a) A foreign corporation may not transact business in this state until it obtains a certificate of authority from the Secretary of State.
- (b) The following activities, among others, do not constitute transacting business within the meaning of subsection (a) of this section:
- (1) maintaining, defending, or settling any proceeding;
 - (2) holding meetings of the board of directors or members or carrying on other activities concerning internal corporate affairs;
 - (3) maintaining bank accounts;
 - (4) maintaining offices or agencies for the transfer, exchange, and registration of memberships or securities or maintaining trustees or depositaries with respect to those securities;
 - (5) selling through independent contractors;
 - (6) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;
 - (7) creating or acquiring indebtedness, mortgages, and security interests in real or personal property;
 - (8) securing or collecting debts or enforcing mortgages and security interests in property securing the debts;
 - (9) owning, without more, real or personal property;

(10) conducting an isolated transaction that is completed within thirty (30) days and that is not one in the course of repeated transactions of a like nature;

(11) transacting business in interstate commerce.

(c) The list of activities in subsection (b) of this section is not exhaustive.

History. Acts 1993, No. 1147, § 1501.

4-33-1502. Consequences of transacting business without authority.

(a) A foreign corporation transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

(b) The successor to a foreign corporation that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.

(c) A court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

(d) A foreign corporation is liable for a civil penalty of not more than five thousand dollars (\$5,000) and not less than one hundred dollars (\$100) if it transacts business in this state without a certificate of authority. The Secretary of State shall promulgate regulations for the calculation of the appropriate penalty, taking into consideration the size and assets of the corporation, the number of days the corporation has transacted business within the state and the amount of business transacted. The Secretary of State may institute proceedings in the Chancery Court of Pulaski County to collect all penalties due under this subsection.

(e) Notwithstanding subsections (a) and (b) of this section, the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in this state.

History. Acts 1993, No. 1147, § 1502.

4-33-1503. Application for certificate of authority.

(a) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the Secretary of State. The application must set forth:

(1) the name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of § 4-33-1506;

(2) the name of the state or country under whose law it is incorporated;

(3) the date of incorporation and period of duration;

(4) the street address of its principal office;

(5) the address of its registered office in this state and the name of its registered agent at that office;

(6) the names and usual business or home addresses of its current directors and officers;

(7) whether the foreign corporation has members; and

(8) whether the corporation, if it had been incorporated in this state, would be a public benefit, mutual benefit or religious corporation.

(b) The foreign corporation shall deliver with the completed application a certificate of existence (or a document of similar import) duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under whose law it is incorporated.

History. Acts 1993, No. 1147, § 1503.

4-33-1504. Amended certificate of authority.

(a) A foreign corporation authorized to transact business in this state must obtain an amended certificate of authority from the Secretary of State if it changes:

(1) its corporate name;

(2) the period of its duration; or

(3) the state or country of its incorporation.

(b) The requirements of § 4-33-1503 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

History. Acts 1993, No. 1147, § 1504.

4-33-1505. Effect of certificate of authority.

(a) A certificate of authority authorizes the foreign corporation to which it is issued to transact business in this state subject, however, to the right of the state to revoke the certificate as provided in this chapter.

(b) A foreign corporation with a valid certificate of authority has the same rights and enjoys the same privileges as and, except as otherwise provided by this chapter, is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic corporation of like character.

(c) This chapter does not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.

History. Acts 1993, No. 1147, § 1505.

4-33-1506. Corporate name of foreign corporation.

(a) If the corporate name of a foreign corporation does not satisfy the requirements of § 4-33-401, the foreign corporation, to obtain or maintain a certificate of authority to transact business in this state, may use a fictitious name to transact business in this state if its real name is unavailable and it delivers to the Secretary of State for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(b) Except as authorized by subsections (c) and (d) of this section, the corporate name (including a fictitious name) of a foreign corporation must be distinguishable upon the records of the Secretary of State from:

(1) the corporate name of a nonprofit or business corporation incorporated or authorized to transact business in this state;

(2) a corporate name reserved or registered under § 4-33-402 or § 4-33-403 of this chapter or § 4-27-402 or § 4-27-403; and

(3) the fictitious name of another foreign business or nonprofit corporation authorized to transact business in this state.

(c) A foreign corporation may apply to the Secretary of State for authorization to use in this state the name of another corporation (incorporated or authorized to transact business in this state) that is not distinguishable upon the records of the Secretary of State from the name applied for. The Secretary of State shall authorize use of the name applied for if:

(1) the other corporation consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying corporation; or

(2) the applicant delivers to the Secretary of State a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(d) A foreign corporation may use in this state the name (including the fictitious name) of another domestic or foreign business or nonprofit corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the foreign corporation:

(1) has merged with the other corporation;

(2) has been formed by reorganization of the other corporation; or

(3) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(e) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of § 4-33-401, it shall not transact business in this state under the changed name until it adopts a name satisfying the requirements of § 4-33-401 and obtains an amended certificate of authority under § 4-33-1504.

4-33-1507. Registered office and registered agent of foreign corporation.

Each foreign corporation authorized to transact business in this state must continuously maintain in this state:

(1) a registered office with the same address as that of its registered agent; and

(2) a registered agent, who may be:

(i) an individual who resides in this state and whose office is identical with the registered office;

(ii) a domestic business or nonprofit corporation whose office is identical with the registered office; or

(iii) a foreign business or nonprofit corporation authorized to transact business in this state whose office is identical with the registered office.

History. Acts 1993, No. 1147, § 1507.

4-33-1508. Change of registered office or registered agent of foreign corporation.

(a) A foreign corporation authorized to transact business in this state may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:

(1) its name;

(2) the street address of its current registered office;

(3) if the current registered office is to be changed, the street address of its new registered office;

(4) the name of its current registered agent;

(5) if the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent (either on the statement or attached to it) to the appointment; and

(6) that after the change or changes are made, the street addresses of its registered office and the office of its registered agent will be identical.

(b) If a registered agent changes the street address of its business office, the agent may change the address of the registered office of any foreign corporation for which the agent is the registered agent by notifying the corporation in writing of the change and signing (either manually or in facsimile) and delivering to the Secretary of State for filing a statement of change that complies with the requirements of subsection (a) of this section and recites that the corporation has been notified of the change.

History. Acts 1993, No. 1147, § 1508.

4-33-1509. Resignation of registered agent of foreign corporation.

(a) The registered agent of a foreign corporation may resign as agent by signing and delivering to the Secretary of State for filing the original and two (2) exact or conformed copies of a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

(b) After filing the statement, the Secretary of State shall attach the filing receipt to one (1) copy and mail the copy and receipt to the registered office if not discontinued. The Secretary of State shall mail the other copy to the foreign corporation at its principal office address, if known.

(c) The agency is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

History. Acts 1993, No. 1147, § 1509.

4-33-1510. Service on foreign corporation.

(a) The registered agent of a foreign corporation authorized to transact business in this state is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation.

(b) A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation at its principal office shown in its application for a certificate of authority if the foreign corporation:

(1) has no registered agent or its registered agent cannot with reasonable diligence be served;

(2) has withdrawn from transacting business in this state under § 4-33-1520; or

(3) has had its certificate of authority revoked under § 4-33-1531.

(c) Service is perfected under subsection (b) of this section at the earliest of:

(1) the date the foreign corporation receives the mail;

(2) the date shown on the return receipt, if signed on behalf of the foreign corporation; or

(3) five (5) days after its deposit in the United States mail, as evidenced by the postmark if mailed postpaid and correctly addressed.

(d) This section does not prescribe the only means, or necessarily the required means, of serving a foreign corporation.

History. Acts 1993, No. 1147, § 1510.

4-33-1511 — 4-33-1519. [Reserved.]**Part B — Withdrawal****4-33-1520. Withdrawal of foreign corporation.**

(a) A foreign corporation authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the Secretary of State.

(b) A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the Secretary of State for filing. The application must set forth:

(1) the name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(2) that it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(3) that it revokes the authority of its registered agent to accept service on its behalf and appoints the Secretary of State as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to do business in this state;

(4) a mailing address to which the Secretary of State may mail a copy of any process served on him or her under subdivision (b)(3) of this section; and

(5) a commitment to notify the Secretary of State in the future of any change in the mailing address.

(c) After the withdrawal of the corporation is effective, service of process on the Secretary of State under this section is service on the foreign corporation. Upon receipt of process, the Secretary of State shall mail a copy of the process to the foreign corporation at the post office address set forth in its application for withdrawal.

History. Acts 1993, No. 1147, § 1520.

4-33-1521 — 4-33-1529. [Reserved.]**Part C — Revocation of Certificate of Authority****4-33-1530. Grounds for revocation.**

(a) The Secretary of State may commence a proceeding under § 4-33-1531 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(1) the foreign corporation does not pay within one hundred twenty (120) days after they are due any franchise taxes or penalties imposed by this chapter or other law;

(2) the foreign corporation is without a registered agent or registered office in this state for one hundred twenty (120) days or more;

(3) the foreign corporation does not inform the Secretary of State under § 4-33-1508 or § 4-33-1509 that its registered agent or registered office has changed, that its registered agent has resigned, or that

its registered office has been discontinued within ninety (90) days of the change, resignation, or discontinuance;

(4) an incorporator, director, officer, or agent of the foreign corporation signed a document such person knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing; or

(5) the Secretary of State receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger.

(b) The Attorney General may commence a proceeding under § 4-33-1531 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(1) the corporation has continued to exceed or abuse the authority conferred upon it by law; or

(2) the corporation would have been a public benefit corporation had it been incorporated in this state and that its corporate assets in this state are being fraudulently misapplied or wasted.

History. Acts 1993, No. 1147, § 1530.

4-33-1531. Procedure and effect of revocation.

(a) The Secretary of State upon determining that one (1) or more grounds exist under § 4-33-1530 for revocation of a certificate of authority shall serve the foreign corporation with written notice of that determination under § 4-33-1510.

(b) The Attorney General upon determining that one or more grounds exist under § 4-33-1530(b) for revocation of a certificate of authority shall request the Secretary of State to serve, and the Secretary of State shall serve the foreign corporation with written notice of that determination under § 4-33-1510.

(c) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State that each ground for revocation determined by the Secretary of State does not exist within sixty (60) days after service of the notice is perfected under § 4-33-1510, the Secretary of State may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the foreign corporation under § 4-33-1510.

(d) The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(e) The Secretary of State's revocation of a foreign corporation's certificate of authority appoints the Secretary of State the foreign corporation's agent for service of process in any proceeding based on a

cause of action that arose during the time the foreign corporation was authorized to transact business in this state. Service of process on the Secretary of State under this subsection is service on the foreign corporation. Upon receipt of process, the Secretary of State shall mail a copy of the process to the secretary of the foreign corporation at its principal office shown in its application for a certificate of authority or in any subsequent communications received from the corporation stating the current mailing address of its principal office.

(f) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

History. Acts 1993, No. 1147, § 1531.

4-33-1532. Appeal from revocation.

- (a) A foreign corporation may appeal the Secretary of State's revocation of its certificate of authority to the Circuit Court of Pulaski County within thirty (30) days after the service of the certificate of revocation is perfected under § 4-33-1510. The foreign corporation appeals by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of authority and the Secretary of State's certificate of revocation.
- (b) The court may summarily order the Secretary of State to reinstate the certificate of authority or may take any other action the court considers appropriate.
- (c) The court's final decision may be appealed as in other civil proceedings.

History. Acts 1993, No. 1147, § 1532. cuit courts, Ark. Const. Amend. 80, §§ 6.
Cross References. Jurisdiction of cir- 19.

SUBCHAPTER 16

[Reserved]

SUBCHAPTER 17 — TRANSITION PROVISIONS

SECTION.	SECTION.
4-33-1701. Application to existing domestic corporations.	4-33-1704. Severability.
4-33-1702. Application to qualified foreign corporations.	4-33-1705. Repeal.
4-33-1703. Saving provisions.	4-33-1706. Effective date.
	4-33-1707. Public benefit, mutual benefit and religious corporations.

RESEARCH REFERENCES

UALR L.J. Harris, The Nonprofit Corporation Act of 1993: Considering the Election to Apply the New Law to Old Corporations, 16 UALR L.J. 1.

4-33-1701. Application to existing domestic corporations.

All provisions of this chapter shall apply to all domestic corporations incorporated on or after January 1, 1994, as specified in § 4-33-1706. A corporation incorporated prior to January 1, 1994, under any general statute of this state providing for incorporation of nonprofit corporations may elect to be governed by the provisions of this chapter by amending its articles of incorporation to provide that it shall be so governed. Such election may be made at any time on or after midnight, December 31, 1993, but once made shall be irrevocable. The amendment to the articles of incorporation effecting such election must be approved by the affirmative vote of at least a majority of the members of the corporation or if such corporation has no members, by the affirmative vote of at least a majority of the directors of the corporation. Domestic corporations existing prior to midnight, December 31, 1993, which do not elect to be governed by its provisions shall continue to be governed by preexisting law. Except for any applicable corporate franchise tax laws or any applicable income tax exemption laws referenced herein, nothing in this chapter shall be deemed to apply to domestic corporations or associations regulated by the Insurance Commissioner under title 23 of the Arkansas Code or related laws as nonprofit corporations including but not limited to hospital or medical service corporations, health maintenance organizations, and fraternal benefit societies.

History. Acts 1993, No. 1147, § 1701; substituted “a majority” for “two-thirds (2/3)” twice in the fourth sentence.

Amendments. The 1999 amendment

4-33-1702. Application to qualified foreign corporations.

A foreign corporation authorized to transact business in this state on January 1, 1994, is subject to this chapter but is not required to obtain a new certificate of authority to transact business under this chapter. Except for any applicable corporate franchise tax laws or any applicable income tax exemption laws referenced herein, nothing in this chapter shall be deemed to apply to foreign corporations and associations regulated by the Insurance Commissioner under title 23 of the Arkansas Code or related laws as nonprofit foreign corporations including but not limited to foreign hospital or medical service corporations, health maintenance organizations, and fraternal benefit societies.

History. Acts 1993, No. 1147, § 1702.

4-33-1703. Saving provisions.

(a) Except as provided in subsection (b) of this section, the repeal of a statute by this chapter does not affect:

(1) the operation of the statute or any action taken under it before its repeal;

(2) any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal;

(3) any violation of the statute or any penalty, forfeiture, or punishment incurred because of the violation, before its repeal;

(4) any proceeding, reorganization, or dissolution commenced under the statute before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the statute as if it had not been repealed; or

(5) any meeting of members or directors or action by written consent noticed or any action taken before its repeal as a result of a meeting of members or directors or action by written consent.

(b) If a penalty or punishment imposed for violation of a statute repealed by this chapter is reduced by this chapter, the penalty or punishment if not already imposed shall be imposed in accordance with this chapter.

History. Acts 1993, No. 1147, § 1703.

4-33-1704. Severability.

If any provision of this chapter or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

History. Acts 1993, No. 1147, § 1704.

4-33-1705. Repeal.

All laws and parts of laws in conflict with this chapter are hereby repealed.

History. Acts 1993, No. 1147, § 1809.

4-33-1706. Effective date.

This chapter takes effect January 1, 1994.

History. Acts 1993, No. 1147, § 1705.

4-33-1707. Public benefit, mutual benefit and religious corporations.

Upon electing to be governed by the provisions of this chapter, each domestic corporation existing on January 1, 1994, that becomes subject to this chapter shall be designated as a public benefit, mutual benefit or religious corporation as follows:

(1) Any corporation designated by statute as a public benefit corporation, a mutual benefit corporation or a religious corporation is the type of corporation designated by statute;

(2) Any corporation that does not come within subsection (1) of this section but is organized primarily or exclusively for religious purposes is a religious corporation;

(3) Any corporation that does not come within subsection (1) or (2) of this section but that is recognized as exempt under section 501(c)(3) of the Internal Revenue Code, or any successor section, is a public benefit corporation;

(4) Any corporation that does not come within subsection (1), (2), or (3) of this section, but that is organized for a public or charitable purpose and that upon dissolution must distribute its assets to a public benefit corporation, the United States, a state or a person that is recognized as exempt under section 501(c)(3) of the Internal Revenue Code, or any successor section, is a public benefit corporation; and

(5) Any corporation that does not come within subsection (1), (2), (3), or (4) of this section is a mutual benefit corporation.

History. Acts 1993, No. 1147, § 1706. section, is codified as 26 U.S.C. § 501(c)(3).
U.S. Code. Section 501(c)(3) of the Internal Revenue Code, referred to in this

CHAPTER 34

REHABILITATIVE SERVICES CORPORATIONS,
HABILITATIVE SERVICES CORPORATIONS, AND
RURAL FIRE PROTECTION CORPORATIONS

SECTION.	SECTION.
4-34-101. Rehabilitative services corporations.	4-34-104. Filing for incorporation.
4-34-102. Habilitative services corporations.	4-34-105. Conversion of nonprofit corporations.
4-34-103. Rural fire protection corporations.	4-34-106. Applicability of laws.
	4-34-107. Property taxes.

4-34-101. Rehabilitative services corporations.

(a) There is authorized the creation of rehabilitative services corporations.

(b) A rehabilitative services corporation shall be a public body and a body corporate and politic.

(c) A rehabilitative services corporation shall be organized to assist the state in carrying out specialized and regular rehabilitative services for Arkansans in need of rehabilitative services.

History. Acts 1999, No. 880, § 1.

4-34-102. Habilitative services corporations.

(a) There is authorized the creation of habilitative services corporations.

(b) A habilitative services corporation shall be a public body and a body corporate and politic.

(c) A habilitative services corporation shall be organized to provide habilitative services and other services for individuals with special educational or training needs.

History. Acts 1999, No. 880, § 2.

4-34-103. Rural fire protection corporations.

(a) There is authorized the creation of rural fire protection corporations.

(b) A rural fire protection corporation shall be a public body and a body corporate and politic.

(c) A rural fire protection corporation shall be organized to provide fire protection to rural areas of the state.

History. Acts 1999, No. 880, § 3.

4-34-104. Filing for incorporation.

One (1) or more persons may act as the incorporator or incorporators of a corporation authorized by this chapter by filing for incorporation in the same manner as for nonprofit corporations under the Arkansas Nonprofit Corporation Act of 1993, § 4-33-101 et seq.

History. Acts 1999, No. 880, § 4.

4-34-105. Conversion of nonprofit corporations.

(a) A corporation organized under the Arkansas Nonprofit Corporation Act of 1993, § 4-33-101 et seq., or the Arkansas Nonprofit Corporation Act, § 4-28-201 et seq., may convert to a corporation authorized by this chapter by filing with the circuit court of the county in which the main office or principal place of business of the corporation is located signed and verified articles of incorporation and a statement that the nonprofit corporation desires to convert to a corporation authorized by this chapter.

(b) If the circuit court finds that the articles of incorporation conform to law and that the incorporation is for a lawful purpose and is in the best interests of the public, the court may issue an order approving conversion to a corporation authorized by this chapter.

(c) If the court approves the conversion, the articles of incorporation in duplicate, signed and verified, and a copy of the order of the court approving the conversion shall be transmitted to the Secretary of State, who shall, when a fee of one hundred dollars (\$100) has been paid:

(1) File the original of the articles in his or her office; and

(2) Issue a certificate of incorporation to which he or she shall affix the other copy of the articles endorsed with the word "filed" and the month, day, and year of the filing and return the certificate of incorporation to the incorporators or their representative.

(d) The new corporation shall obtain all the assets, liabilities, and obligations of the nonprofit corporation and the obligations of the nonprofit corporation shall cease to exist on the date that the Secretary of State issues the certificate of incorporation.

History. Acts 1999, No. 880, § 5.

4-34-106. Applicability of laws.

(a) A corporation authorized by this chapter shall be subject to the provisions of the Arkansas Nonprofit Corporation Act of 1993, § 4-33-101 et seq., except to the extent that the provisions of § 4-33-101 et seq. are in conflict with this chapter.

(b) A corporation authorized by this chapter shall have the right to perpetual succession as a body politic and corporate.

History. Acts 1999, No. 880, § 6.

4-34-107. Property taxes.

Nothing in this chapter shall be construed to affect the corporation's obligation to pay property taxes.

History. Acts 1999, No. 880, § 7.

CHAPTER 35

WATER PROVIDER CORPORATIONS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. PUBLIC WATER AUTHORITIES.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 4-35-101. Authorization.
 4-35-102. Filing for incorporation.
 4-35-103. Conversion of nonprofit corporations.

SECTION.

- 4-35-104. Applicability of law.

Publisher's Notes. Because of the enactment of subchapter 2 of this chapter by Acts 2001, No. 115, the existing provisions

of this chapter have been designated as subchapter 1.

4-35-101. Authorization.

- (a) There is authorized the creation of water provider corporations.
 (b) A water provider corporation shall be a public body and a body corporate and politic.

(c) A water provider corporation shall be organized to provide potable water and other associated service to Arkansas residents.

History. Acts 1999, No. 1003, § 1.

4-35-102. Filing for incorporation.

One (1) or more persons may act as the incorporator or incorporators of a corporation authorized by this subchapter by filing for incorporation in the same manner as for nonprofit corporations under the Arkansas Nonprofit Corporation Act of 1993, § 4-33-101 et seq.

History. Acts 1999, No. 1003, § 2.

4-35-103. Conversion of nonprofit corporations.

(a) A corporation organized under the Arkansas Nonprofit Corporation Act of 1993, § 4-33-101 et seq., or the Arkansas Nonprofit Corporation Act, §§ 4-28-201 — 4-28-206 and §§ 4-28-209 — 4-28-224, may convert to a corporation authorized by this subchapter by filing, with the circuit court of the county in which the main office or principal place of business of the corporation is located, signed and verified articles of incorporation and a statement that the nonprofit corporation desires to convert to a corporation authorized by this subchapter.

(b) If the circuit court finds that the articles of incorporation conform to law and that the incorporation is for a lawful purpose and is in the best interests of the public, the court may issue an order approving conversion to a corporation authorized by this subchapter.

(c) If the court approves the conversion, the articles of incorporation in duplicate, signed and verified, and a copy of the order of the court approving the conversion shall be transmitted to the Secretary of State, who shall, when a fee of one hundred dollars (\$100) has been paid:

(1) File the original of the articles in his or her office; and

(2) Issue a certificate of incorporation to which he or she shall affix the other copy of the articles endorsed with the word “filed” and the month, day, and year of the filing and return the certificate of incorporation to the incorporators or their representative.

(d) The new corporation shall obtain all the assets, liabilities, and obligations of the nonprofit corporation and the obligations of the nonprofit corporation shall cease to exist on the date that the Secretary of State issues the certificate of incorporation.

History. Acts 1999, No. 1003, § 3.

4-35-104. Applicability of law.

(a) A corporation authorized by this subchapter shall be subject to the provisions of the Arkansas Nonprofit Corporation Act of 1993, § 4-33-101 et seq., except to the extent that the provisions of that chapter are in conflict with this subchapter.

(b) A corporation authorized by this subchapter shall have the right to perpetual succession as a body politic and corporate.

(c) In addition to other powers, the corporation may own and operate facilities necessary to provide potable water and associated services to Arkansas residents.

History. Acts 1999, No. 1003, § 4.

SUBCHAPTER 2 — PUBLIC WATER AUTHORITIES

SECTION.

- 4-35-201. Legislative intent.
- 4-35-202. Definitions.
- 4-35-203. Construction.
- 4-35-204. Authority generally.
- 4-35-205. Authority and procedure to incorporate.
- 4-35-206. Execution and recording.
- 4-35-207. Board of directors.
- 4-35-208. Officers.
- 4-35-209. Powers generally.

SECTION.

- 4-35-210. Tax exemption of projects.
- 4-35-211. Issuance of bonds.
- 4-35-212. Execution of bonds.
- 4-35-213. Security for bonds.
- 4-35-214. Bonds — Tax exemption.
- 4-35-215. Proceeds from issuance of bonds.
- 4-35-216. Refunding bonds.
- 4-35-217. Dissolution.

Publisher's Notes. Because of the enactment of subchapter 2 of this chapter by Acts 2001, No. 115, the existing provisions of this chapter have been designated as subchapter 1.

Cross References. Waterworks operators, § 17-51-101.
Public water systems, § 20-28-101.

4-35-201. Legislative intent.

It is the intent of the General Assembly to provide a means by which a not-for-profit corporation involved in the sale, transmission, and distribution of potable water to members of the public and others may convert its entity status from that of a body corporate to that of a body politic, thereby allowing such an entity the opportunity to access the tax-exempt capital markets and thereby assuring the State of Arkansas and the customers of such an entity of the lowest water rates possible.

History. Acts 2001, No. 115, § 1.

4-35-202. Definitions.

As used in this subchapter, unless the context otherwise requires:

- (1) "Board" means the board of directors of a water authority;
- (2) "Bond" means any bond, promissory note, lease purchase agreement, or other evidence of indebtedness of any nature along with all debt-securing instruments of every nature related thereto;
- (3) "Commission" means the Arkansas Soil and Water Conservation Commission or its successors;

(4) “Indenture” means a mortgage, indenture of mortgage, deed of trust, trust agreement, loan agreement, security agreement, or trust indenture executed by the water authority as security for any bonds;

(5)(A) “Project” means any raw or potable water intake, treatment, distribution, transmission, storage, pumping, well site, well field, or other facility, or any combination of the foregoing, which has as its purpose the provision of raw or potable water to members of the public and commercial, industrial, or other users, along with any and all other appurtenances, equipment, betterments, or improvements related thereto.

(B) The above projects may include any lands or interest therein deemed by the board to be desirable in connection therewith, and necessary equipment for the proper functioning and operation of the buildings or facilities involved;

(6) “Qualified corporation” means any not-for-profit corporation which provides, distributes, transmits, treats, pumps, or stores raw or potable water to or for the benefit of members of the general public and commercial, industrial, and other users;

(7) “State” means the State of Arkansas;

(8) “United States” means the United States of America or any of its agencies or instrumentalities; and

(9) “Water authority” means that body politic and governmental entity organized pursuant to the provisions of this subchapter.

History. Acts 2001, No. 115, § 2.

4-35-203. Construction.

(a) This subchapter shall be liberally construed in conformity with its intent.

(b) All acts and activities of a water authority performed pursuant to the authority of this subchapter are legislatively determined and declared to be essential governmental functions.

History. Acts 2001, No. 115, § 3.

4-35-204. Authority generally.

(a) There is conferred upon a water authority the authority to take such action and to do, or cause to be done, such things as shall be necessary or desirable to accomplish and implement the purposes and intent of this subchapter according to the import of this subchapter.

(b) It is specifically understood that, except for the provisions of this subchapter, no other statutes shall govern or pertain to the creation of a water authority under this subchapter or the issuance of bonds by a water authority.

History. Acts 2001, No. 115, § 4.

4-35-205. Authority and procedure to incorporate.

Whenever a qualified corporation desires to convert into and become reconstituted and reincorporated as a water authority under and pursuant to this subchapter, the qualified corporation shall present to and file with the Arkansas Soil and Water Conservation Commission:

(1) Its resolution duly adopted by the board of directors of the qualified corporation which evidences the desire of the qualified corporation to convert into and become reconstituted and reincorporated as a water authority and which shall additionally certify that the qualified corporation:

(A) Was initially formed as a not-for-profit corporation;

(B) Does not have the ability to directly access the tax-exempt capital markets other than through a conduit issuer; and

(C) Desires to realize interest rate savings as a result of its conversion and reconstitution as a water authority pursuant to this subchapter;

(2) Its application for reconstitution and certificate of incorporation which shall state and include the following information:

(A) The name of the water authority, which shall be the "Public Water Authority of the State of Arkansas", or some other name of similar import, it being understood that the water authority may adopt a fictitious operational name upon written request to and approval by the commission;

(B) The location of the water authority's principal office and the number of directors of the water authority, which shall be subject to change and modification as provided in the water authority's bylaws;

(C) The names and addresses of the initial board of directors of the qualified corporation;

(D) The name and address of the agent for service of process of the qualified corporation;

(E) Any other matters that the initial board of directors of the qualified corporation may deem necessary and appropriate; and

(F) Any other matters that the commission may designate and require;

(3) A copy of the qualified corporation's bylaws, along with any other information which the initial board of directors of the qualified corporation may deem necessary and appropriate;

(4) A statement and certification from the Secretary of State that the proposed name of the water authority is not identical to that of any other water authority in the state or so nearly similar as to lead to confusion and uncertainty;

(5) That filing and review fee that the commission may designate and determine from time to time; and

(6) Any other information and documents which the commission may designate and require.

4-35-206. Execution and recording.

(a) An application for reconstitution and certificate of incorporation shall be signed and acknowledged by a majority of the board of directors of a qualified corporation.

(b)(1) When an application for reconstitution and certificate of incorporation and other required documents have been so filed with and accepted by the Arkansas Soil and Water Conservation Commission as evidenced by the issuance by the commission of its certificate of existence in that form that the commission may deem appropriate, the water authority referred to therein shall come into existence and shall constitute a body corporate and politic and a political subdivision of the state under the name set forth in the certificate of incorporation, whereupon the water authority shall be vested with the rights and powers granted in this subchapter and contemporaneously therewith, the qualified corporation shall cease to exist and all assets and liabilities of every nature, including, without limitation, all real property, personal property, contractual obligations, lending obligations outstanding, rights afforded borrowers of federal and state funds, and other tangible and intangible assets and liabilities of every nature, without need for further action or approval by any third party, shall be vested in and shall accrue to the benefit of the water authority.

(2) All meetings and records of the water authority shall be subject to the Freedom of Information Act of 1967, § 25-19-101 et seq.

(3)(A)(i) A copy of a water authority's application for reconstitution and certificate of incorporation shall additionally be filed in the office of the Secretary of State after its receipt, acceptance, and approval by the commission.

(ii) The Secretary of State may require the payment of a reasonable filing and receipt fee not in excess of the filing fee charged by the Secretary of State in connection with the receipt and filing of a corporation's articles of incorporation.

(B) Filing a copy of the application for reconstitution and a copy of the certificate of incorporation, as accepted and approved by the commission, with the Secretary of State shall serve to terminate and dissolve the previous corporate existence of the qualified corporation.

History. Acts 2001, No. 115, § 6.

4-35-207. Board of directors.

(a)(1) A water authority shall have a board of directors composed of the number of directors provided in its certificate of incorporation.

(2) All powers of a water authority shall be exercised by its board of directors or pursuant to its authorization.

(b)(1) Directors shall be elected and determined and shall serve in accordance with those procedures that a water authority may specify in its bylaws.

(2) A water authority's bylaws shall contain provisions and procedures for the election and appointment of its directors that are identical

in nature to those same provisions and procedures as contained in the qualified corporation's bylaws, unless approval to modify and amend such procedures is expressly granted in writing by the Arkansas Soil and Water Conservation Commission.

(c)(1)(A) A majority of the members of a board shall constitute a quorum for the transaction of business.

(B) No vacancy in the membership of a board shall impair the right of a quorum to exercise all the powers and duties of a water authority.

(2) A director shall continue in office until the director's successor is properly elected and accepts office.

(d) The members of a board and the officers of a water authority shall serve without compensation, except that they may be reimbursed for actual expenses incurred in and about the performance of their duties.

(e) All proceedings of a board shall be reduced to writing by the secretary of the water authority and appropriately recorded and maintained in a well-bound book.

History. Acts 2001, No. 115, § 7.

4-35-208. Officers.

(a) The officers of a water authority shall consist of a chair, vice chair, secretary, treasurer, and such other officers as a board shall deem necessary to accomplish the purposes for which a water authority is organized.

(b) All officers of a water authority shall be persons who receive water service from the water authority.

(c) The offices of secretary and treasurer may, but need not, be held by the same person.

(d) All officers of a water authority shall be elected by the board and shall serve for those terms of office as specified in the bylaws.

History. Acts 2001, No. 115, § 8.

4-35-209. Powers generally.

A water authority shall have the following powers, together with all powers incidental thereto or necessary to the discharge thereof:

(1) To have succession in its designated name;

(2) To sue and be sued and to prosecute and defend suits in any court having jurisdiction of the subject matter and of the parties;

(3) To make use of a seal and to alter it at pleasure;

(4) To adopt and alter bylaws for the regulation and conduct of its affairs and business;

(5) To acquire, whether by purchase, gift, lease, devise, or otherwise, property of every description which a board of directors may deem necessary to the acquisition, construction, equipment, improvement, enlargement, operation, administration, or maintenance of a project, and to hold title thereto;

(6) To construct, enlarge, equip, improve, maintain, administer, and operate one (1) or more projects;

(7) To borrow money for any of its purposes;

(8) To sell and issue its interest-bearing bonds;

(9) To sell and issue refunding bonds;

(10) To secure any of its bonds by pledge and indenture as provided in this subchapter;

(11) To appoint, employ, and compensate such general managers, executive directors, agents, architects, engineers, attorneys, accountants, and other persons and employees as the business of the water authority may require;

(12) To provide for such insurance as the board may deem advisable;

(13) To invest in obligations that are direct or guaranteed obligations of the United States or other securities in which public funds may be invested under the laws of this state, any of its funds that the board may determine are not presently needed for its operational purposes;

(14) To contract, lease, and make lease agreements respecting its properties, or any part thereof;

(15) To exercise the power of eminent domain in accordance with the procedures prescribed by § 18-15-301 et seq.; and

(16) To sell, convey, or otherwise dispose of any of its properties that may have become obsolete or worn out, or that may no longer be needed or useful in connection with, or in the operation of, any project.

History. Acts 2001, No. 115, § 9.

4-35-210. Tax exemption of projects.

Each project, and all income therefrom, is determined and declared by the General Assembly to be public property used exclusively for a public purpose and shall be exempt from ad valorem taxation by all taxing authorities.

History. Acts 2001, No. 115, § 10.

4-35-211. Issuance of bonds.

(a) A water authority is authorized at any time and from time to time to issue its interest-bearing bonds for the purpose of acquiring, constructing, improving, enlarging, completing, and equipping one (1) or more projects.

(b)(1)(A) Prior to a water authority's proposed issuance of bonds, the water authority shall publish one (1) time in a newspaper of general circulation in the affected county or counties:

(i) Notice of the proposed issuance of bonds;

(ii) The approximate principal amount of bonds contemplated to be sold;

(iii) A general description of the project contemplated to be constructed with bond proceeds; and

(iv) The date of a public meeting at which members of the public may obtain further information regarding the sale of the bonds and the development of the project.

(B) Notice under subdivision (b)(1)(A) of this section shall be published at least ten (10) days prior to the date of the hearing described in subdivision (b)(1)(A)(iv) of this section.

(2) A water authority chair or his or her designee shall be responsible for conducting the hearing and shall require all public comments which might pertain to the proposed issuance of bonds by the water authority.

(3) Upon compliance with the provisions of this section, no other notice, hearing, or approval by any other entity or governmental unit shall be required as a condition to the issuance by a water authority of its contemplated bonds.

(c) The principal of and the interest on any bonds may be payable out of the revenues derived from the projects with respect to which the bonds are issued or from any other source available to a water authority.

(d) None of the bonds of a water authority shall ever constitute an obligation or debt of the state, the city or county in which the water authority operates, the Arkansas Soil and Water Conservation Commission, or any officer or director of the water authority, or a charge against the credit or taxing powers of the state.

(e) As the water authority shall determine, bonds of the water authority may:

(1) Be issued at any time and from time to time as may be appropriate and necessary;

(2) Be in such form and denominations as may be appropriate and necessary;

(3) Have such date or dates as may be appropriate and necessary;

(4) Mature at such time or times and in such amount or amounts, provided that no bonds may mature more than forty (40) years after the date of issuance, as may be appropriate and necessary;

(5) Bear interest payable at such times and at such rate or rates as may be established by the board, as may be appropriate and necessary;

(6) Be payable at such place or places within or without the State of Arkansas, as may be appropriate and necessary;

(7) Be subject to such terms of redemption in advance of maturity at such prices, including such premiums, as may be appropriate and necessary; and

(8) Contain such other terms and provisions as may be appropriate or necessary.

(f)(1) Bonds of a water authority may be sold at either public or private sale in such manner and from time to time as may be determined by the board of directors to be most advantageous.

(2) The water authority may pay all expenses, premiums, and commissions that the board may deem necessary or advantageous in connection with the authorization, sale, and issuance of its bonds.

(g) All bonds shall contain a recital that they are issued pursuant to the provisions of this subchapter, which recital shall be conclusive that

they have been duly authorized pursuant to the provisions of this subchapter.

(h) All bonds issued under the provisions of this subchapter shall be and are declared to be negotiable instruments within the meaning of the negotiable instruments law of the state and shall be in registered form.

History. Acts 2001, No. 115, § 11.

4-35-212. Execution of bonds.

(a) Bonds shall be executed by the manual or facsimile signature of the chair of the water authority and by the manual or facsimile signature of the secretary of the water authority.

(b) In case any of the officers whose signatures appear on the bonds shall cease to be such officer before the delivery of the bonds, their signatures shall nevertheless be valid and sufficient for all purposes.

(c) The bonds shall be sealed with the seal of the water authority.

History. Acts 2001, No. 115, § 12.

4-35-213. Security for bonds.

(a) The principal of and interest on bonds may be secured by a pledge of the revenues of a water authority of that project financed by the water authority through its issuance of bonds or from any other source that the water authority may deem necessary and appropriate, and may be secured by the creation of a mortgage and security interest encumbering the real property of the water authority, or security interest in all personal property and revenues of the water authority as set forth in the indenture.

(b) The trustee under any indenture may be a trust company or bank having trust powers, whether located within or without the state.

(c) The indenture may contain, all as the board of directors shall deem advisable and as shall not be in conflict with the provisions of this subchapter, any agreements and provisions customarily contained in instruments securing evidences of indebtedness, including, without limiting the generality of the foregoing:

(1) Provisions respecting the nature and extent of the security;

(2) The collection, segregation, and application of the revenues generated from the operation of any project covered by the indenture;

(3) Covenants to always operate the project as a revenue-producing undertaking and to charge and collect, including the obligation to increase from time to time, sufficient revenue to maintain income at required levels;

(4) The maintenance and insurance of the project;

(5) The creation and maintenance of reserve and other special funds; and

(6) The rights and remedies available in the event of default to the holders of the bonds or the trustees under the indenture.

(d) If there is any default by a water authority in payment of the principal of or the interest on the bonds or in any of the agreements on the part of the water authority that may properly be included in any indenture securing the bonds, the bondholders or the trustee under any indenture, as authorized in such indenture, may either in law or in equity, by suit, action, mandamus, or other proceeding, enforce payment of the principal or interest and compel performance of all duties of the board and officers of the water authority and shall be entitled as a matter of right and regardless of the sufficiency of any such security to the appointment of a receiver in equity with all the powers of such receiver for the operation and maintenance of the project covered by such indenture and the collection, segregation, and applications of income and revenues therefrom.

(e) The indenture may contain provisions regarding the rights and remedies of any trustee thereunder and the holders of the bonds and the coupons and restricting the individual rights of action of the holders of the bonds and coupons.

History. Acts 2001, No. 115, § 13.

4-35-214. Bonds — Tax exemption.

(a) The principal of and interest on bonds issued under the authority of this subchapter shall be exempt from all state, county, and municipal taxes.

(b) This exemption shall include income, inheritance, and estate taxes.

History. Acts 2001, No. 115, § 14.

4-35-215. Proceeds from issuance of bonds.

(a) The proceeds derived from all of the bonds other than refunding bonds may be used only to pay the costs of acquiring, constructing, improving, enlarging, and equipping the project with respect to which they were issued, as may be specified in the proceedings in which the bonds are authorized to be issued and all costs incidental thereto, including, without limitation:

(1) The costs of any land forming a part of the project and all easements which may pertain to or be associated with any project;

(2) The costs of the labor, materials, and supplies used in any construction, improvement, and enlargement, including architect's and engineer's fees and the cost of preparing contract documents and advertising for bids, along with all other reasonable and necessary project costs;

(3) The purchase price of and the cost of installing equipment for the project;

(4) Legal, fiscal, accounting, and recording fees and expenses incurred in connection with the authorization, sale, and issuance of the bonds issued in connection with the project;

(5) Interest on bonds for a reasonable period prior to, during, and after the time required for such construction and equipment;

(6) The amount necessary to fund a debt service reserve in an amount deemed appropriate by the water authority;

(7) Costs associated with the obtaining of default insurance, ratings, and other credit enhancements of every nature; and

(8) Other operational expenses, reserves, and other accounts of every nature.

(b) If any of the proceeds derived from the issuance of bonds remains undisbursed after completion of the project and the making of all such expenditures, the balance shall be used for the redemption of bonds of the same issue.

History. Acts 2001, No. 115, § 15.

4-35-216. Refunding bonds.

(a) A water authority, at any time and from time to time, may issue refunding bonds for the purpose of refunding the principal of and interest on any bonds of the water authority theretofore issued under this subchapter and then outstanding, whether or not the principal and interest shall have matured at the time of the refunding under this subchapter, and for the payment of any expenses incurred in connection with the refunding and any premium necessary to be paid in order to redeem or retire the bonds to be refunded.

(b) The proceeds derived from the sale of any refunding bonds shall be used only for the purposes for which the refunding bonds were authorized to be issued.

(c)(1) Any such refunding may be effected either by sale of the refunding bonds and the application of the proceeds thereof by immediate application or by escrow deposit, with the right to invest moneys in the escrow deposit until needed for the redemption, or by exchange of the refunding bonds for the bonds or interest coupons to be refunded thereby.

(2) However, the holders of any bonds so to be refunded shall not be compelled without their consent to surrender their bonds for payment or exchange prior to the date on which they may be paid or redeemed by the water authority under their respective provisions.

(d) Any refunding bonds of the water authority shall be payable solely from the revenues out of which the bonds to be refunded were payable or from those other sources or other revenues which might be identified in the indenture.

(e) All provisions of this subchapter pertaining to bonds of the water authority that are not inconsistent with the provisions of this section shall apply also to refunding bonds issued by the water authority, to the extent applicable.

History. Acts 2001, No. 115, § 16.

4-35-217. Dissolution.

(a) A water authority shall be dissolved upon the expiration of its term of existence as set forth in the water authority's application for reconstitution and certificate of incorporation, if the term of existence is less than perpetual in nature.

(b) A water authority may additionally be dissolved upon application to, and the approval in writing by, the Arkansas Soil and Water Conservation Commission.

History. Acts 2001, No. 115, § 17.

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